

# A REVIEW OF DOE'S ACCELERATED CLEANUP PROGRAM AND STATE-BASED COMPLIANCE AGREEMENTS

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## HEARING BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED SEVENTH CONGRESS SECOND SESSION

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JULY 19, 2002

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**Serial No. 107-124**

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Printed for the use of the Committee on Energy and Commerce



Available via the World Wide Web: <http://www.access.gpo.gov/congress/house>

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U.S. GOVERNMENT PRINTING OFFICE

81-492CC

WASHINGTON : 2002

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## **A REVIEW OF DOE'S ACCELERATED CLEANUP PROGRAM AND STATE-BASED COMPLIANCE AGREEMENTS**

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**FRIDAY, JULY 19, 2002**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ENERGY AND COMMERCE,  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2123, Rayburn House Office Building, James C. Greenwood (chairman) presiding.

Members present: Representatives Greenwood, Gillmor, Whitfield, Deutsch, and Strickland.

Staff present: Dwight Cates, majority professional staff; Peter Kielty, legislative clerk; and Edith Holleman, minority counsel.

Mr. GREENWOOD. The subcommittee will come to order. I welcome our witnesses and our guests this morning. The Chair recognizes himself for 5 minutes for making an opening statement.

Today, we will review the Department of Energy's new Accelerated Cleanup Reform Initiative and the impact this initiative will have on existing compliance agreements with the States.

DOE's Office of Environmental Management has been the subject of extensive oversight by this subcommittee over the past 8 years. Several Oversight and Investigations Subcommittee hearings in earlier Congresses exposed many failures, including the Pit 9 fixed price contract disaster at the Idaho site, extensive mismanagement of the Office of Science and Technology, the failed privatization effort at the Hanford Tank Farms, and a catalog of contract reform initiatives that went nowhere.

The subcommittee continues its focus on the EM program for two reasons. First, we want to ensure DOE cleans up the nuclear waste legacy to eliminate the risks these sites pose to human health and the environment. Second, we want to help EM turn the tide on mismanagement and wasteful spending that has resulted in cost overruns, schedule delays, and little cleanup progress.

DOE has already spent \$60 billion on cleanup over the past 12 years, with marginal results. The current schedule and cost estimates to complete cleanup at DOE's waste sites is 70 years and \$220 billion. However, I hope we can do much better than that. With better management, why can't we shave 30 years and \$100 billion from these estimates? The answer is, we can.

During the cold war, the Federal Government selected strategic sites across the Nation to conduct research and produce nuclear

weapons that defend us today. In 1992, former President Bush ended much of our weapons production activities. Today, the States want these sites cleaned up, and they have used the legal tools Congress has given them to compel DOE to clean up these sites.

Two laws greatly aid the States in their cleanup mission—the Comprehensive Environmental Response Compensation and Liability Act and the Resource Conservation and Recovery Act. These statutes authorize the States to enter into legally enforceable compliance agreements that have been used to get DOE’s attention and to demand DOE get on with the cleanup.

In the past, relationship between the States and DOE has been largely adversarial. DOE built nuclear bombs with secrecy, and it has been hard for the Department to open up and let outside parties assess the environmental damage.

Many of these compliance agreements were entered into 10 or more years ago, before anyone believed DOE was really committed to cleanup and before anyone really knew the extent of the problems. Thus, some of the older compliance agreements reflect a cold war attitude between the States and DOE. We know that when such attitudes prevail, cleanup can become a second priority. Unlike earlier EM reform initiatives, Assistant Secretary Roberson’s accelerated cleanup initiative is predicated on cooperation and an up-front agreement between DOE and the States onsite-specific cleanup plans.

The States hold the key to making this work, and they must agree to change compliance agreements if it will result in more risk reduction and accelerated cleanup. DOE must also change its failed business management processes. Assistant Secretary Roberson understands these problems well, and her prior job as the Site Manager at Rocky Flats reflects a commitment to cleanup.

Today’s hearing is not a “bad news” hearing. The Accelerated Cleanup Initiative could prove to be an important turning point for the EM program, and I want the subcommittee to review it closely in the early stages.

I look forward to hearing from each of the witnesses and learning more about how we can accelerate cleanup and cut billions of dollars from current cost projections. Hopefully this Accelerated Cleanup Initiative will succeed so there is no need to schedule accelerated hearings on what went wrong.

The Chair recognizes the ranking member, the gentleman from Florida, Mr. Deutsch, for 5 minutes.

Mr. DEUTSCH. Thank you, Mr. Chairman. I appreciate the staff’s work and the Chairman’s work setting this up. This is one of the things that, as a committee, is a lot less contentious in many of hearings with both sides working very well together, and I think we are fulfilling our mandate as the Oversight and Investigations Subcommittee, and I look forward to your testimony. Yield back the balance of my time.

[The prepared statement of Hon. Peter Deutsch follows:]

PREPARED STATEMENT OF HON. PETER DEUTSCH, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF FLORIDA

The U.S. DOE created the Hemispheric Center for Environmental Technology (HCET) at Florida International University in my State of Florida in 1995 to research, develop, and demonstrate innovative, cost-effective technologies to solve cru-

cial environmental problems involved with the accelerated cleanup of nuclear facilities and the promotion of the health and safety of the workers involved and their surrounding communities.

HCET has done a remarkable job of working, for nearly 10 years, with the Department of Energy in the deactivation and decommissioning of some of the most strategically important DOE sites in the Nation, including Fernald (Ohio), Chicago, Albuquerque, Richland (Wash.), and Oak Ridge (Tenn.) HCET has conducted over 100 major environmental science and technology investigations for DOE.

I am very pleased to see DOE's involvement with FIU's HCET because I believe it is important to involve qualified university partners to assist in the cleanup who are flexible and cost-effective, and who can work hand in hand with DOE to achieve its mission. This is good for technology-transfer purposes, as well as for helping us achieve our student training objectives.

Both Secretary of Energy Abraham and EPA Administrator Christie Todd Whitman have visited HCET and lauded its many accomplishments in improving the environment. Secretary Abraham said, "HCET has compiled an impressive list of technological accomplishments, from deactivation and decommissioning technology to sensor technology, robotics, and tank waste remediation."

EPA Administrator Whitman said "the work being done here (at HCET) is a reaffirmation of a belief that President Bush and I share that some of the best solutions to some of the biggest problems we have today are happening out in the field."

Mr. GREENWOOD. The Chair thanks the gentleman, and recognizes the gentleman from Kentucky from 5 minutes for an opening statement.

Mr. WHITFIELD. Mr. Chairman, thank you very much. We are delighted to be having this hearing on this important issue. I want to commend the Department of Energy and the leadership there for developing this program for accelerated cleanup. It has been frustrating for those of us who are in Kentucky. I represent Paducah, Kentucky, in which the Paducah Gaseous Diffusion Plant is located and is one of the sites eligible for accelerated cleanup. I noticed that Letters of Intent have already been signed with 6 or 7 sites, but Paducah, Kentucky is not one of those sites. I am quite frustrated that I don't know exactly what has caused the delay because we don't seem to be able to get sufficient information from the State of Kentucky on why they are dragging their feet in reaching this agreement with DOE.

I know there is going to be \$1.1 billion in additional funds for the year 2003, and that if Kentucky does not agree with the Department of Energy to enter into a Letter of Intent, we will not get the Paducah site cleaned up until at least the year 2024. If we can reach an agreement we have a possibility of doing it by 2010. So, I think we have a unique opportunity to accelerate these cleanups, and I am disappointed that Kentucky, our EPA Region IV or someone, has not reached an agreement yet. I also know that August 1 is quickly approaching—that is the deadline.

So, I hope that today at this hearing we can at least shed some light on the unique problems in Kentucky and why we are not moving forward in a more expeditious way. I look forward to the testimony and yield back my time.

Mr. GREENWOOD. The Chair thanks the gentleman.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Mr Chairman, thank you for scheduling this hearing to review the Department of Energy's Office of Environmental Management. This is the Subcommittee's first review of the EM program during the 107th Congress and its a good time to meas-

ure what progress the program has made in response to the Subcommittee's numerous hearings in the 104th, 105th, and 106th Congresses.

Those hearings revealed a troubling past for the EM program. For instance, in 1996, the Subcommittee uncovered alarming contract mismanagement and cost overruns with the Pit 9 cleanup project at DOE's Idaho site.

In 1997, the Subcommittee uncovered severe cost overruns and schedule delays at the K-Basins cleanup project at the Hanford site, where spent nuclear fuel must be removed from degraded storage facilities located just yards away from the Columbia River in Washington.

Three Subcommittee hearings were held in the 105th and 106th Congresses that brought to light substantial mismanagement of the EM program's Office of Science and Technology. The Subcommittee's first hearing revealed how this small but expensive program had spent \$3 billion to develop new cleanup technologies, but could not even provide a list of technologies it had funded, or demonstrate whether those technologies had ever been used to clean up a DOE waste site. By our third hearing, OST had compiled a list of its technologies, but we learned the EM program had not found much use for them.

Over the years, the Subcommittee has closely reviewed EM's multiple contract reform initiatives, including failed efforts at fixed-price contracting, a failed bid to privatize cleanup at the Hanford radioactive waste tank farms, and the unsuccessful "10-year" accelerated cleanup plan.

I am pleased to see that GAO is here today. I appreciate its hard work, in conjunction with the Subcommittee, on just about all of these projects.

Today, however, I hope to hear about the progress of the EM program under the new leadership of Assistant Secretary Jesse Roberson. In the few months since she took over, I understand she has taken steps to really turn things around. I am particularly pleased with Assistant Secretary Roberson's initiative to downsize and redirect the Office of Science and Technology, and I hope we can finally get some of those technologies deployed.

I welcome Assistant Secretary Roberson to her first hearing before the Committee, and I offer my support for your ambitious accelerated cleanup initiative. This initiative is a bold and strategic effort. I believe it could result in real cleanup and you have my support.

However, you have a real fight on your hands to demonstrate progress. I hope you can finally turn the tide of bad news for the EM program. Thank you and I yield back.

Mr. GREENWOOD. Ms. Roberson, Ms. Jones, again, welcome. I think you are both aware that this committee is holding an investigative hearing, and when we do so we are accustomed to take testimony under oath. Do either of you have objections to testifying under oath?

[Noes.]

Mr. GREENWOOD. We need to also advise you that pursuant to the rules of this committee and the rules of the House, that you are entitled to counsel, if you wish counsel. Do either of you wish to be represented by counsel?

[Noes.]

Mr. GREENWOOD. In that case, if you would both stand and raise your right hands.

[Witnesses sworn.]

Mr. GREENWOOD. Thank you.

You are under oath, and we will start with you, Ms. Roberson. You are recognized for 5 minutes for your opening statement.

**TESTIMONY OF HON. JESSIE H. ROBERSON, ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT, DEPARTMENT OF ENERGY; AND GARY JONES, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENTAL ISSUES, GENERAL ACCOUNTING OFFICE**

Ms. ROBERSON. Good morning. Chairman Greenwood, members of the committee, I appreciate this opportunity to discuss progress

in implementing cleanup reform in the Department's Environmental Management Program. I am pleased to report to you today that we are making progress in changing our focus from risk management to risk reduction. We are instilling in this program the kind of urgency necessary to clean up the nuclear legacy and to secure our homeland.

The comprehensive review of the environmental program conducted last year concluded that the program was badly in need of repair. For more than 10 years, we have spent tens of billions of dollars, but have failed to make commensurate progress toward cleanup and risk reduction. We are determined to make changes. We are moving forward aggressively to make those changes, and we commit to deliver more cleanup and risk reduction for the taxpayers' dollars and for the communities around the sites.

Our first emphasis has been on bringing site cleanup plans up-to-date. We have been pursuing a deliberative multi-step process at each of our sites, working with State and EPA regulators to identify actions to accelerate risk reduction. I am pleased to report that we have made considerable progress in reaching mutual agreement on the goals, shared goals, objectives, and the means to the new risk-based cleanup strategies. To date, we have signed six Letters of Intent to pursue accelerated cleanup strategies. We have draft Performance Management Plans that detail the activities that support those strategies as to how that cleanup will be achieved, and those plans are currently undergoing public review and comment.

We are very close to announcing that additional Letters of Intent have been finalized. Based on these letters and the associated Performance Management Plans, on July 8 the Secretary and the Director of the Office of Management and Budget agreed that the Administration would very soon transmit to the Congress a fiscal year 2003 budget amendment for up to \$300 million. This amendment is necessary to support cleanup reform at numerous sites, as documented in these Letters of Intent between the Department, the EPA and the States.

We must also tackle the business management systems that prohibit the program from obtaining a true performance-based organization. We have begun a dedicated effort to implement changes in key areas identified in the Top-to-Bottom review that are critical to the success of the program and the performance of the accelerated cleanup plan. We will focus these activities into special projects, each with a complex wide perspective. Some of these projects are truly implementing performance-based contracting, addressing obstacles and reducing risk from spent nuclear fuel, high-level waste, and nuclear materials faster, and focusing program resources by eliminating activities that do not contribute directly to getting on with risk-based cleanup.

As GAO accurately reports, the cleanup at DOE sites is subject to multiple Federal and State environmental laws. These are implemented through compliance agreements with the agencies that enforce the laws. Our focus is on improving the performance of the program. It is not our intent to get out of compliance with any of our regulatory agreements, but to adopt new cleanup approaches and realign priorities, and this may require modifications to some

regulatory milestones. These agreements are intended to be living documents and contain processes to do that.

Our efforts to work with regulators to review the cleanup agreement must be viewed in the context of our overall efforts to reform and accelerate cleanup. The regulatory agencies are key to these reform efforts. Without their agreement, we are hard-pressed to make changes. The good news is that we found most State and EPA regulators to be as eager to achieve faster cleanup and risk reduction.

In conclusion, let me say that we have before us an opportunity to refocus, reshape and transform this program. For too long, there has been a shared frustration that too little progress was being made. However, I believe the progress we have made so far this year and the agreements we have reached at sites across the country on better ways to attack cleanup problems demonstrate a shared recognition that we can, and all must do better. I look forward to working with the Congress, our State partners, and others, to achieve these goals. I am pleased to answer your questions.

[The prepared statement of Hon. Jessie H. Roberson follows.]

PREPARED STATEMENT OF JESSIE H. ROBERSON, ASSISTANT SECRETARY FOR  
ENVIRONMENTAL MANAGEMENT, U.S. DEPARTMENT OF ENERGY

Mr. Chairman and Members of the Subcommittee, I appreciate this opportunity to discuss the Department of Energy's Environmental Management (EM) program, our progress to date in implementing the cleanup reform initiative, and the impact and role of the compliance agreements on DOE's cleanup reform initiative.

I particularly appreciate the opportunity to update you on the progress we are making in reforming the EM program to re-focus efforts on our cleanup and closure mission and on accelerating risk reduction at our sites. The comprehensive, "Top-to-Bottom" review of the EM program conducted last year concluded that this program is badly in need of repair. For more than ten years, we have spent tens of billions of dollars but have failed to make commensurate progress towards cleanup and risk reduction. We are determined to make changes. We are moving forward aggressively to make good on our promises to deliver more cleanup and risk reduction for the taxpayers' dollar.

Our focus is on improving the performance of the EM program and on identifying and implementing more risk-oriented and efficient cleanup approaches that serve the communities around the sites and the taxpayer. It is not our intent to get out of compliance with any of our regulatory agreements. These agreements are living documents, with processes to enable improvement and revisions to achieve mutual goals. While adopting new cleanup approaches and realigning priorities may require modification of some milestones, our efforts to work with regulators and to review the cleanup agreements must be viewed in the context of our overall efforts to reform and accelerate cleanup.

PROGRESS IN IMPLEMENTING CLEANUP REFORM

Since the Top-to-Bottom review was completed, we have been working aggressively to evaluate and implement the recommendations. Initially, our emphasis has been on bringing site cleanup plans up to date. Significant opportunities for innovative approaches exist. We have been pursuing a deliberative, multi-step process at each of our sites to identify actions to accelerate risk reduction, working with regulators and other stakeholders.

The first step in the process is reaching high-level, strategic agreement with the state and U.S. Environmental Protection Agency (EPA) regulators on how the site cleanup can be accelerated. This agreement is documented in a Letter of Intent signed by DOE and the regulatory agencies that outlines the broad goals, objectives, and strategic direction for accelerated cleanup work at the site. We are also preparing a Performance Management Plan for each site which provides a detailed delineation of how the site will accelerate risk reduction and cleanup. From this Plan, we will then develop a baseline crosswalk from the current baseline to an integrated resource-loaded project baseline that EM will use to manage cleanup at the site. Throughout the process, we have worked closely with state and federal regu-

lators to ensure that compliance obligations are consistent with the accelerated cleanup plan. When appropriate and on a case-by-case basis, we are working with regulators to align our regulatory obligations with the cleanup approaches.

*Progress Toward Site Accelerated Cleanup Plans*

We have made progress in reaching mutual agreement on the goals, objectives and means of the new risk based cleanup strategy. To date we have signed six Letters of Intent to pursue accelerated cleanup strategies at the following sites.

- Hanford Site in Washington, issued on March 5, 2002
- Oak Ridge Reservation in Tennessee, issued on May 15, 2002
- Nevada Test Site, issued on May 23, 2002
- Idaho National Engineering and Environmental Laboratory, issued on May 30, 2002
- Los Alamos and Sandia National Laboratories, and the Waste Isolation Pilot Plant in New Mexico, issued on May 30, 2002
- Savannah River Site in South Carolina, issued on July 12, 2002

Draft Performance Management Plans for about ten sites, including Hanford, INEEL, Oak Ridge Reservation, and the Savannah River Site, have already been made available for public comment. Our goal is to have Letters of Intent and Performance Management Plans, plus commitments from the regulators to take appropriate actions for implementation, completed at most of our sites by August 2002.

We are very close to announcing that Letters of Intent have been finalized for a number of other sites. Based on these letters and the Performance Management Plans being developed, on July 8, 2002, the Secretary and the Director of the Office of Management and Budget agreed that the Administration would very soon transmit to the Congress an FY 2003 Budget Amendment for up to \$300 million. This Amendment is necessary to support cleanup reforms at numerous cleanup sites documented by signed Letters of Intent between the Department, EPA and state regulators.

*Taking on Cross-Complex and Internal Challenges*

Now that we have begun to update our cleanup plans, we must tackle the business management systems that prohibit the EM program from operating as a true performance-based organization. Updating the cleanup plans is an important goal. However, the ability to actually carry out the commitments in the updated plans depends on objectively and credibly adjusting the organization to reflect continuous improvement.

EM has begun a dedicated effort to implement changes in key areas identified in the Top-to-Bottom review that are critical to the success of the program. The implementation of needed changes will be addressed via a number of special project teams. Some examples of the projects include:

- Implementing performance-based contracting;
- Addressing obstacles and reducing risks from spent nuclear fuel, high level waste, and nuclear materials, faster;
- Focusing program resources by eliminating activities that do not contribute to getting on with a risk-based cleanup; and
- Structuring an integrated, accelerated cleanup program for small sites and projects.

We have offered Federal staff from the field and headquarters the opportunity to develop proposals and apply to be project managers for these projects. We have received more than 100 proposals. A senior level EM manager will serve as an advisor to the project team. Projects will be managed in accordance with the project management principles outlined in DOE Orders. This approach is an important part of our human capital management initiative. Successful execution of these projects will eliminate many of the barriers that have thwarted previous EM attempts to accelerate cleanup and reduce life-cycle costs.

DOE'S COMPLIANCE OBLIGATIONS

We have reviewed the General Accounting Office's (GAO) draft report, "Status and Implications of DOE's Compliance Agreements," and generally support its findings and conclusions. As the GAO noted in their report, the cleanup at DOE's sites that contributed to the nation's nuclear weapons program and nuclear energy research is subject to multiple federal and state environmental laws, implemented and enforced by multiple agencies. Like other Federal agencies, the Department must comply with requirements in these laws in the same manner, and is generally subject to the same sanctions, as a private party.

The two primary laws governing cleanup are the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or Superfund, which governs cleanup of hazardous substances releases, and the Resource Conservation and Recovery Act (RCRA), which governs the management of hazardous waste, including mixed hazardous and radioactive waste. In accordance with these laws, the Department has entered into legal agreements and orders with State and/or EPA authorities to carry out its cleanup activities or to resolve compliance issues. These legal agreements contain milestones that establish schedules for carrying out specific actions. The GAO draft report listed 70 agreements at 23 sites governing EM's activities, incorporating almost 7,200 separate milestones.

Many of the agreements were negotiated ten or more years ago, when the EM program was in its early years. While reflecting the best understanding of the contamination problems and technical solutions at the time, it was recognized even then that the agreements and milestones would need to be periodically revisited and revised over time. The agreements therefore contain processes that allow the Department and the regulators that are parties to the agreements to do just that. We all recognize that adopting new cleanup approaches and realigning priorities to ensure we are addressing the highest risk first may require modification of some milestones contained in the agreements.

The regulatory agencies that implement and enforce the laws governing most of our cleanup activities are key to our efforts to reform the EM program. Without their agreement, we are hard pressed to make the changes in cleanup approaches that we believe will result in more risk reduction and accelerated progress. Without their willingness to adjust milestones when necessary to support more risk-oriented cleanup priorities or a more cost-effective approach, we may be unable to proceed no matter how compelling the alternate path.

The good news is that we have found most of our state regulators and EPA regions to be as eager as we are to achieve faster cleanup. Our efforts to work with the regulators at each of our sites over the past months to identify more effective cleanup approaches have resulted in strategic agreements at a number of our sites. We continue to make progress in developing the more detailed plans that articulate the activities and schedules for an accelerated cleanup approach.

Let me be clear, however. The Department understands its obligation to comply with environmental laws and compliance agreements. We also believe it is critical that those obligations are compatible with reducing risk, as quickly and effectively as possible, and with completing the cleanup task assigned to us. We believe reform of DOE's environmental cleanup program can be achieved while meeting our environmental obligations.

#### CONCLUSION

The Department's cleanup reform initiative is not focused solely, or even primarily, on the agreements. Rather it is focused on the EM cleanup program itself and on its mission to complete cleanup and close sites. We are determined to ensure that our cleanup efforts are directed toward reducing risk as quickly and efficiently as possible.

We have before us an opportunity to refocus, reshape and transform this program. I believe the progress we have made so far and the agreements we have reached at sites across the country on better ways to attack cleanup problems, demonstrate a shared frustration with too little progress to date, and a shared commitment to do better. I look forward to continuing working with the Congress and others to achieve our goals.

Mr. GREENWOOD. Thank you, Ms. Roberson. I failed to properly introduce you as the Assistant Secretary for Environmental Management at the Department of Energy. I apologize for that. Thank you for your testimony.

Ms. Jones is the Director of Natural Resources and Environment Issues at the General Accounting Office. Welcome, and you are also recognized for 5 minutes.

#### TESTIMONY OF GARY JONES

Ms. JONES. Thank you, Mr. Chairman. We are pleased to be here to discuss our report which you are releasing at the hearing today on cleanup compliance agreements. Specifically, I want to focus on what compliance agreements are and how they work, whether costs

to comply with them are shown in the budget, and what possible implications they have on DOE's efforts to improve the cleanup program.

Compliance agreements are legally enforceable documents between DOE and its regulators, specifying agreements on cleanup activities and milestones. We identified 70 compliance agreements at 23 DOE sites that contain almost 7,200 separate milestones. The milestones range from requiring a specific cleanup activity such as remediating groundwater contamination in a given area, to obtaining a permit, one step that contributes to eventual cleanup.

DOE reported completing about 80 percent of these milestones by the time originally scheduled in the agreements, however, the number of milestones completed is not a good measure of cleanup progress. One reason is that many of the milestones require completing an administrative requirement that may not indicate that actual cleanup work was performed.

When DOE misses a milestone, regulators have several options, including negotiating a new date or assessing a penalty. Thus far, regulators have generally been willing to negotiate extensions approving about 93 percent of DOE's requests for milestone changes.

The cost of complying with these agreements is not specifically identified in a DOE budget submitted to the Congress and, in fact, DOE is not required to provide this information to the Congress. Individual DOE sites develop annual compliance cost estimates as part of their budget request. However, DOE Headquarters officials adjust those individual site estimates to reflect national priorities and to reconcile various competing demands. Consequently, the final budget request does not identify what portion of the request is intended to address compliance requirements.

Compliance agreements are site-specific and do not include specific information on the risks being addressed. Therefore, they are not intended to provide a mechanism for DOE to use in prioritizing risks for an individual site or among various sites. In developing compliance agreements, risk is only one of several factors considered. Other factors include the preference and concerns of local stakeholders, business and technical risks, the cost associated with maintaining old facilities, and the desire to achieve progress on cleanup.

One of the central components of DOE's February 2002 initiative to improve the Environmental Management Program is to prioritize cleanup based on risk reduction. In the past, DOE has made several attempts to develop a risk-based methodology across its sites, but has not succeeded. Therefore, DOE's approach has been to provide a relatively stable amount of funding at each site from year to year, and generally allow local DOE managers and the community to determine the schedules and prioritizing for sequencing work at each site.

DOE officials have told us that they are considering how best to develop a risk-based cleanup strategy, but it is unclear when the strategy will be in place. Meanwhile, DOE is proceeding to select and approve sites where cleanup activities would be accelerated. As noted by Assistant Secretary Roberson, six major DOE sites with compliance agreements have Letters of Intent with their regulators

outlining an agreement in principle to use a risk-based approach to accelerate cleanup with increased funding.

Will compliance agreements get in the way of EM's new initiative? They haven't in the past. DOE's past management initiatives, such as contract reform, generally have not involved significant changes in cleanup approach or reductions in funding at individual sites. Because past initiatives did not require these types of changes, regulators generally supported them.

This initiative is different. In some cases, to significantly reduce cleanup costs, it involves potential changes in technology or approach that would result in leaving more of the waste onsite than currently planned. In other cases, allocating funding based on risk reduction could shift funding among sites. Regulators told us during the course of our work that they would be opposed to receiving reduced funding and might not be willing to modify the compliance agreements to further extend scheduled milestones or leave more waste onsite.

Mr. Chairman, there are challenges ahead. Management leadership and resolve will be needed to overcome failures of past attempts to implement a risk-based approach to cleanup. DOE must also follow through on its plan to involve regulators in site implementation plans. DOE generally did not involve States and regulatory agencies in the development of its management initiative. Regulators have expressed concerns about the lack of specifics in the initiative, how implementation plans will be developed at individual sites, and proposals that may delay or significantly alter cleanup strategies. Even where regulators have signed on to the goals in the Letters of Intent, many technical, regulatory and operational decisions need to be made and implementation barriers overcome to make these goals a reality.

Thank you. I would be happy to respond to any questions.

[The prepared statement of Gary Jones follows.]

PREPARED STATEMENT OF GARY JONES, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT ISSUES, GENERAL ACCOUNTING OFFICE

Mr. Chairman: We are here today to discuss compliance agreements that affect the Department of Energy's (DOE) cleanup program. Compliance agreements are legally enforceable documents between DOE and its regulators, specifying cleanup activities and milestones that DOE has agreed to achieve.<sup>1</sup> DOE's Office of Environmental Management (EM) is responsible for much of the actual cleanup activity, which is carried out primarily under two federal laws—the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), and the Resource Conservation and Recovery Act of 1976, as amended (RCRA). Besides DOE, other parties to the agreements include the Environmental Protection Agency (EPA) and state agencies that have jurisdiction over environmental and health issues. Over the years, these compliance agreements have been used to implement much of the cleanup activity at DOE sites. In February 2002, the Secretary of Energy proposed a new initiative to refocus DOE's cleanup program by accel-

<sup>1</sup> The term "compliance agreement" includes, but is not limited to, Federal Facility Agreements, Interagency Agreements, settlement agreements, consent orders, and compliance orders. It does not include federal and state environmental requirements that are not implemented by compliance agreements. Also, some cleanup work is required in certain of DOE's RCRA permits that authorize waste treatment operations. We did not include RCRA permits in our study because (1) the great majority of DOE's cleanup work is covered by compliance agreements and (2) cleanup work required by RCRA permits is generally also included under the compliance agreements at those sites. Also in this testimony, we use the term "regulators" to mean those federal and state agencies that are parties to DOE's compliance agreements.

erating risk reduction at the sites. Questions have been raised about the relationship of this initiative to the schedules outlined in compliance agreements.

My testimony is based on our report to you on the status and implications of DOE's compliance agreements, which you are releasing today.<sup>2</sup> My testimony addresses five topics: (1) the types of compliance agreements, (2) DOE's progress in achieving the milestones contained in the agreements, (3) whether the cost to comply with the agreements is reflected in DOE's annual budget request, (4) whether the agreements allow DOE to prioritize work across sites according to relative risk, and (5) possible implications the agreements have on DOE's efforts to improve the cleanup program.

In summary,

- The 70 compliance agreements at DOE sites vary greatly but can be divided into three main types. These are: (1) agreements specifically required by CERCLA to address cleanup of federal sites on EPA's national priorities list of the nation's worst hazardous waste sites or by RCRA to address the management of mixed radioactive and hazardous waste at DOE facilities, (2) court-ordered agreements resulting from lawsuits initiated primarily by states, and (3) other agreements, including state administrative orders enforcing state hazardous waste management laws. Collectively, as of December 2001, the 70 agreements had 7,186 schedule milestones.<sup>3</sup>
- DOE reported completing about 80 percent of these milestones by the time originally scheduled in the agreements. Many of the milestones completed either have been administrative, such as issuing a report, or have involved completing some step in the cleanup process, such as conducting certain tests. Although such process steps may be important in arriving at eventual cleanup, for several reasons the number of milestones completed is not a good measure of cleanup progress. For example, many of the milestones require completing an administrative requirement that may not indicate what, if any, actual cleanup work was performed. When DOE misses a milestone, regulators have several options, including negotiating a new date or assessing a penalty. Thus far, regulators have generally been willing to negotiate extensions when DOE found itself unable to complete a milestone on time, approving about 93 percent of DOE's requests for milestone changes. However, DOE has paid about \$1.8 million in monetary penalties and about \$4 million in other penalties (such as added work requirements) because regulators took enforcement actions for missed milestones.
- The cost of complying with these agreements is not specifically identified in the DOE budget submitted to the Congress. Individual DOE sites develop annual compliance cost estimates as part of their budget requests. However, DOE headquarters officials adjust those individual site estimates to reflect national priorities and to reconcile various competing demands. Consequently, the final budget request does not identify what portion of the request is intended to address compliance requirements. DOE is not required to provide this information to the Congress. Even if it were possible to trace this relationship in the final budget, the figure would have limited significance because sites' compliance estimates are based primarily on the expected size of the site budget. If the funding sites receive is insufficient to accomplish all of the compliance activities planned for that year, sites must decide which activities to defer to future years. In contrast, if sites receive more funding than anticipated in a particular year, they have an opportunity to increase the amount of money spent on compliance requirements.
- Compliance agreements are site-specific and are not intended to provide a mechanism for DOE to use in prioritizing risks among the various sites. The agreements reflect local DOE and community priorities for addressing environmental contamination at individual sites and were not designed or developed to consider environmental risk from a DOE-wide perspective. DOE has made several attempts to develop a risk-based methodology across its sites, but has not succeeded because of problems, such as its failure to integrate any of the approaches into the decision-making process. Rather than prioritize risk across sites, DOE has attempted to provide a relatively stable amount of funding at each site from year to year and generally allow local DOE managers and the community to determine the priorities for sequencing work at each site. However, DOE's February 2002 initiative to improve the Environmental Management program has as a central component

<sup>2</sup>U.S. General Accounting Office, *Waste Cleanup: Status and Implications of DOE's Compliance Agreements*, GAO-02-567 (Washington, D.C.: May 30, 2002).

<sup>3</sup>Five of the agreements containing 130 milestones were completed and are no longer active. For the remaining agreements, the number of milestones will increase over time because some of the agreements provide for setting milestone dates periodically over the life of the agreements rather than trying to establish all of the milestone dates at the beginning of the agreements.

developing risk-reduction priorities and concentrating its efforts on activities that contribute to risk reduction. DOE is considering how to best develop a risk-based cleanup strategy, but it is unclear when the strategy will be in place. Meanwhile, DOE is proceeding to select and approve sites where cleanup activities would be accelerated. To date, at least five major DOE sites with compliance agreements have signed letters of intent with their regulators outlining an agreement in principle to accelerate cleanup with increased funding.

- Compliance agreements have not been a barrier to previous DOE management initiatives, but it is not clear if the compliance agreements will be used to oppose DOE's latest initiative to focus on accelerating risk reduction at the sites. This initiative could have a potentially greater impact on cleanup approaches and funding levels than prior initiatives. DOE's past management initiatives, such as the contract reform initiative, generally have not involved significant changes in cleanup approach or significant reductions in funding at individual sites. Regulators generally supported these initiatives, saying that they favor efforts to implement faster, less costly ways to reduce the environmental risks at the sites, as long as DOE's approach did not reduce funding for individual sites. DOE's recent initiative, however, has the potential to alter the funding balance among DOE sites. In some cases, it involves potential changes in technology or approach that would result in leaving more of the waste on site than currently planned and thus could significantly reduce cleanup costs. In other cases, it could allocate funding using a greater emphasis on risk reduction, which could shift funding among sites. Regulators told us that they would be opposed to receiving reduced funding at their individual sites and might not be willing to modify the compliance agreements to further extend schedule milestones. DOE generally did not involve the regulators in developing its reform initiative, but it is now coordinating with regulators as it develops implementation strategies for each site. Beyond the five or more letters of intent signed to date, it is too early to tell if regulators will support these changes to site cleanup programs. Furthermore, even at locations where letters of intent have been signed, many technical, regulatory, and operational decisions need to be made to implement the proposals.

#### BACKGROUND

DOE is responsible for a nationwide complex of facilities created during World War II and the Cold War to research, produce, and test nuclear weapons. Much of the complex is no longer in productive use, but it contains vast quantities of radioactive waste related to the production of nuclear material, such as plutonium-contaminated sludge, and hazardous waste, such as solvents and hazardous chemicals. Since the 1980s, DOE has been planning and carrying out activities around the complex to clean up, contain, safely store, and dispose of these materials. It is a daunting challenge, involving the development of complicated technologies and costing about \$220 billion over 70 years or more. DOE has reported completing its cleanup work at 74 of the 114 sites in the complex, but those were small and the least difficult to deal with. The sites remaining to be cleaned up present enormous challenges to DOE.

DOE's cleanup program is carried out primarily under two environmental laws. Under section 120 of CERCLA, EPA must, where appropriate, evaluate hazardous waste sites at DOE's facilities to determine whether the waste sites qualify for inclusion on the National Priorities List, EPA's list of the nation's most serious hazardous waste sites. For each facility listed on the National Priorities List, section 120(e) (2) of CERCLA requires DOE to enter into an interagency agreement with EPA for the completion of all necessary remedial actions at the facility. These agreements often include the affected states as parties to the agreements. These agreements may be known as Federal Facility Agreements or Tri-Party Agreements. Under amendments to RCRA contained in section 105 of the Federal Facility Compliance Act of 1992, DOE generally must develop site treatment plans for its mixed-waste sites.<sup>4</sup> These plans are submitted for approval to states authorized by EPA to perform regulatory responsibilities for RCRA within their borders or to EPA if the state does not have the required authority. Upon approval of the treatment plans, the state or EPA must issue an order requiring compliance with the approved plan. The agreements are generally known as Federal Facility Compliance orders.

DOE carries out its cleanup program through the Assistant Secretary for Environmental Management and in consultation with a variety of stakeholders. These include the federal EPA and state environmental agencies, county and local govern-

<sup>4</sup>Mixed wastes are wastes that contain both radioactive materials subject to the Atomic Energy Act and hazardous wastes, such as degreasing solvents.

mental agencies, citizen groups, advisory groups, Native American tribes, and other organizations. In most cases, DOE's regulators are parties to the compliance agreements.<sup>5</sup> Other stakeholders advocate their views through various public involvement processes including site-specific advisory boards.

#### COMPLIANCE AGREEMENTS ARE OF THREE MAIN TYPES

Compliance agreements in effect at DOE sites can be grouped into three main types (see table 1). Agreements of the first type—those specifically required by CERCLA or by RCRA—are in effect at all of DOE's major sites. They tend to cover a relatively large number of cleanup activities and have the majority of schedule milestones that DOE must meet. By contrast, agreements that implement court-ordered settlements exist at only a few DOE sites, tend to be focused on a specific issue or concern, and have fewer associated schedule milestones. These agreements are typically between DOE and states. The remaining agreements are based on either federal or state environmental laws and address a variety of purposes, such as cleaning up spills of hazardous waste or remediating groundwater contamination, and have a wide-ranging number of milestones.

Table 1: Types of DOE Compliance Agreements and Related Schedule Milestones

Type of agreement	Number of agreements	Number of sites	Number of enforceable milestones
Agreements specifically required to implement CERCLA and RCRA requirements	29	20	5,251
Court-ordered agreements resulting from lawsuits	6	6	146
All other agreements	35	12	1,789
<b>Total</b>	<b>70</b>	<b>*23</b>	<b>7,186</b>

\*The numbers in this column do not add because many DOE sites have more than one agreement.  
Source: GAO analysis of DOE data.

Most of the milestones DOE must meet are contained in the compliance agreements at its six largest sites—Hanford, Savannah River, Idaho Falls, Rocky Flats, Oak Ridge, and Fernald. These six DOE sites are important because they receive about two-thirds of DOE's cleanup funding. In all, these sites account for 40 of the agreements and more than 4,200 milestones.

#### MOST MILESTONE DATES HAVE BEEN MET, BUT MEETING MILESTONES IS NOT A GOOD MEASURE OF CLEANUP PROGRESS

DOE reported completing about two-thirds of the 7,186 milestones contained in its compliance agreements as of December 2001. Of the 4,558 milestones completed, about 80 percent were finished by the original due date for the milestone. The remainder of the completed milestones were finished either after the original due date had passed or on a renegotiated due date, but DOE reported that the regulators considered the milestones to be met. DOE's six largest sites reported completing a total of 2,901 of their 4,262 milestones and met the original completion date for the milestones an average of 79 percent of the time. As table 2 shows, this percentage varied from a high of 95 percent at Rocky Flats to a low of 47 percent at Savannah River. Besides the 1,334 milestones currently yet to be completed, additional milestones will be added in the future.

Table 2: Information on Compliance Agreement Milestones at DOE's Six Largest Cleanup Sites

Site and state	Dollars in millions				
	Current EM lifecycle cleanup estimate	Number of enforceable milestones <sup>1</sup>	Number of milestones completed	Number of milestones completed on original date <sup>2</sup>	Percent of completed milestones meeting original due date
Hanford (including Office of River Protection), Washington	\$62,097	1,080	825	743	90
Savannah River, South Carolina	37,809	714	556	264	47
Idaho Falls, Idaho	27,881	428	334	312	93
Oak Ridge, Tennessee	8,456	846	513	360	70

<sup>5</sup> In a few instances, other stakeholders have become signatories to compliance agreements in the settlement of ongoing litigation brought against DOE.

Table 2: Information on Compliance Agreement Milestones at DOE's Six Largest Cleanup Sites—  
Continued  
Dollars In millions

Site and state	Current EM lifecycle cleanup estimate	Number of enforceable milestones <sup>1</sup>	Number of milestones completed	Number of milestones completed on original date <sup>2</sup>	Percent of completed milestones meeting original due date
Rocky Flats, Colorado .....	7,705	119	62	59	95
Fernald, Ohio .....	3,341	1,075	611	558	91

<sup>1</sup> The total number of milestones is not yet known because at some sites, many milestones will be added in the future as cleanup strategies change, new schedules are set, and new work is defined.

<sup>2</sup> The number of milestones completed on the original due date is the total of all milestones satisfactorily completed the original date DOE agreed to with regulators. Those milestones completed on other than the original due date were generally not considered missed milestones because the milestone dates were either extended or renegotiated with regulators.

Source: GAO analysis of DOE data.

Although DOE has completed many of the milestones on time, for several reasons DOE's success in completing milestones on time is not a good measure of progress in cleaning up the weapons complex. Specifically:

- Many of the milestones do not indicate what cleanup work has been accomplished. For example, many milestones require completing an administrative requirement that may not indicate what, if any, actual cleanup work was performed. At DOE's six largest sites, DOE officials reported that about 73 percent of the 2,901 schedule milestones completed were tied to administrative requirements, such as obtaining a permit or submitting a report.
- Some agreements do not have a fixed number of milestones, and additional milestones are added over time as the scope of work is more fully defined. For example, one of Idaho Falls' compliance agreements establishes milestones for remedial activities after a record of decision<sup>6</sup> has been signed for a given work area. Four records of decision associated with the agreement have not yet been approved. Their approval will increase the number of enforceable milestones required under that agreement.
- Many of the remaining milestones are tied to DOE's most expensive and challenging cleanup work, much of which still lies ahead. Approximately two-thirds of the estimated \$220 billion cost of cleaning up DOE sites will be incurred after 2006. DOE has reported that the remaining cleanup activities present enormous technical and management challenges, and considerable uncertainties exist over the final cost and time frame for completing the cleanup.

Even though schedule milestones are of questionable value as a measure of cleanup progress, the milestones do help regulators track DOE's activities. Regulators at the four sites we visited said that the compliance agreements they oversee and the milestones associated with those agreements provide a way to bring DOE into compliance with existing environmental laws and regulations. They said the agreements also help to integrate the requirements under various federal laws and allow regulators to track annual progress against DOE's milestone commitments.

#### *Regulators' Flexible Approach Results in Renegotiated Milestones and Few Penalties*

Regulators have generally been flexible in agreeing with DOE to change milestone dates when the original milestone could not be met. DOE received approval to change milestone deadlines in over 93 percent of the 1,413 requests made to regulators. Only 3 percent of DOE's requests were denied. Regulators at the four sites we visited told us they prefer to be flexible with DOE on accomplishing an agreement's cleanup goals. For example, they generally expressed willingness to work with DOE to extend milestone deadlines when a problem arises due to technology limitations or engineering problems. Because regulators have been so willing to adjust milestones, DOE officials reported missing a total of only 48 milestones, or about 1 percent of milestones that have been completed.

Even in those few instances where DOE missed milestone deadlines and regulators were unwilling to negotiate revised dates, regulators have infrequently applied penalties available under the compliance agreements. DOE reported that regulators have taken enforcement actions only 13 times since 1988 when DOE failed

<sup>6</sup>A record of decision is a document used to select the method of remedial action to be implemented at a site following the completion of a feasibility study or an environmental impact statement.

to meet milestone deadlines. These enforcement actions resulted in DOE paying about \$1.8 million in monetary penalties, as shown in table 3.

Table 3. Number of Compliance Agreement Missed Milestones and Monetary Penalties Paid at DOE Sites

Site and state	Milestones missed	Enforcement actions taken	Monetary penalty paid
Hanford, Washington .....	13	2	<sup>1</sup> \$100,000,
Idaho Falls, Idaho .....	4	2	<sup>2</sup> 970,000
Portsmouth, Ohio .....	2	2	292,000
Fernald, Ohio .....	7	3	250,000
Oak Ridge, Tennessee .....	2	2	100,000
Rocky Flats, Colorado .....	2	2	100,000
<b>Total</b> .....	<b>30</b>	<b>13</b>	<b>\$1,812,000</b>

<sup>1</sup> Hanford regulators recently levied a monetary penalty of \$5,000 for the first week and \$10,000 for each additional week that DOE missed a July 31, 2001, milestone to start construction of a waste treatment facility. However, regulators said they will cancel the penalty if DOE meets a new milestone date set for the end of this year. Therefore, this monetary penalty is not included in table 3.

<sup>2</sup> In April 2002, DOE agreed to pay \$800,000 for missing a milestone requiring submission of scope of work documents for one of the site's waste burial sites. As of the time of this report, DOE had not yet paid the penalty. Therefore, this monetary penalty is not included in table 3.

Source: GAO analysis of DOE data.

In addition to or instead of regulators assessing monetary penalties, several DOE sites agreed to other arrangements valued at about \$4 million. For example, for missing a milestone to open a transuranic<sup>7</sup> waste storage facility at the Rocky Flats site, the site agreed to provide a \$40,000 grant to a local emergency planning committee to support a chemical-safety-in-schools program. At the Oak Ridge site, because of delays in operating a mixed waste incinerator, site officials agreed to move up the completion date for \$1.4 million worth of cleanup work already scheduled. Also, at three sites—Paducah, Kentucky; Lawrence Livermore Main Site, California; and Nevada Test Site, Nevada—the regulators either did not impose penalties for missed milestones or the issue was still under discussion with DOE at the time of our review.

#### DOE'S BUDGET REQUEST DOES NOT IDENTIFY THE FUNDING NEEDED TO MEET COMPLIANCE REQUIREMENTS

The President's budget submitted to the Congress does not provide information on the amount of funding requested for DOE's compliance requirements. DOE sites prepare budget estimates that include compliance cost estimates and submit them for consideration by DOE headquarters. However, DOE headquarters officials evaluate individual site estimates and combine them into an overall DOE-wide budget, taking into account broader considerations and other priorities that it must address as part of the give-and-take of the budget process. As a result, the final budget sent to the Congress has summary information on DOE's programs and activities, but it provides no information on the portion of the budget needed to fund compliance requirements. DOE is not required to develop or present this information to the Congress. The President's budget typically states that the DOE funding requested is sufficient to substantially comply with compliance agreements, but it does not develop or disclose the total amount of funding needed for compliance. Officials at DOE headquarters told us that budget guidance from the Office of Management and Budget does not require DOE to develop or present information on the cost of meeting compliance requirements, and they said doing so for the thousands of milestones DOE must meet would be unnecessarily burdensome. They said their approach has been to allocate funds appropriated by the Congress and make it the sites' responsibility to use the funds in a way that meets the compliance agreement milestones established at the site level.

Individual DOE sites develop information on the estimated cost of meeting compliance agreements, but the annual estimates are a flexible number. Sites develop these estimates because many of the compliance agreements require DOE to request sufficient funding each year to meet all of the requirements in the agreements. Also, DOE must respond to Executive Order 12088, which directs executive agencies to ensure that they request sufficient funds to comply with pollution control standards. Accordingly, each year DOE's sites develop budget estimates that also identify the amount needed to meet compliance requirements. The sites' process in developing

<sup>7</sup>Transuranic waste contains man-made radioactive elements with atomic numbers higher than that of uranium, such as plutonium.

these compliance estimates shows that a compliance estimate is a flexible number. For example, two budget estimates typically completed by the sites each year are the “full requirements” estimate and the “target” estimate. The full requirements estimate identifies how much money a site would need to accomplish its work in what site officials consider to be the most desirable fashion. The target estimate reflects a budget strategy based primarily on the amount of funding the site received the previous year and is considered a more realistic estimate of the funding a site can expect to receive. For each of these budget estimates, DOE sites also include an estimate of their compliance costs. As a result of this process, DOE sites usually have at least two different estimates of their compliance costs for the same budget year. Table 4 shows how the compliance cost estimates related to compliance agreements changed under different budget scenarios at four DOE sites.

Table 4: Cost of Meeting Compliance Requirements under Two Different Budget Scenarios at Four DOE Sites, Fiscal Year 2002

Dollars in millions

DOE Site	Full requirements estimate		Target estimate	
	Compliance <sup>1</sup>	Total	Compliance <sup>1</sup>	Total
Hanford				
Richland .....	\$429.6	<b>\$958.4</b>	\$265.5	<b>\$721.8</b>
River Protection .....	987.1	<b>1,149.7</b>	685.2	<b>838.0</b>
Idaho Falls .....	366.6	<b>643.1</b>	313.6	<b>540.6</b>
Savannah River .....	294.5	<b>1,411.1</b>	288.4	<b>1,268.5</b>
Oak Ridge .....	424.6	<b>741.7</b>	405.5	<b>668.3</b>

<sup>1</sup> The compliance amounts in this column show only the funding associated with meeting requirements contained in compliance agreements. It does not include (1) estimates of the funding needed to comply with requirements in federal, state, or local environmental laws and regulations that are not part of a compliance agreement or (2) the funding DOE estimates is necessary to maintain minimal site infrastructure, security, and safety requirements.

Source: GAO analysis of DOE data.

The multiple estimates of compliance costs developed by individual DOE sites indicate that DOE sites have alternative ways of achieving compliance in any given year. DOE site officials said that how much DOE plans to spend on compliance activities each year varies depending on the total amount of money available. Because many of the compliance milestones are due in the future, sites estimate how much compliance activity is needed each year to meet the future milestones. If sites anticipate that less money will be available, they must decide what compliance activities are critical for that year and defer work on some longer-term milestones to future years. On the other hand, if more money is available, sites have an opportunity to increase spending on compliance activities earlier than absolutely necessary.

#### COMPLIANCE AGREEMENTS ARE SITE SPECIFIC AND DO NOT ALLOW FOR MANAGING RISKS ACROSS DOE SITES

DOE’s compliance agreements focus on environmental issues at specific sites and do not include information on the risks being addressed. As a result, they do not provide a means of setting priorities for risks among sites or a basis for decision-making across all DOE sites. Risk is only one of several factors considered in setting the milestones in compliance agreements. Other factors include the preferences and concerns of local stakeholders, business and technical risk, the cost associated with maintaining old facilities, and the desire to achieve demonstrable progress on cleanup. The schedules for when and in what sequence to perform the cleanup work reflect local DOE and stakeholder views on these and other factors and may not reflect the level of risk. For example, regulators at DOE’s Savannah River site told us that they were primarily concerned that DOE maintain a certain level of effort and they expected DOE to schedule cleanup activities to most efficiently clean up the site. DOE developed a decision model to determine how to allocate its cleanup dollars at Savannah River to achieve this efficiency. A group of outside reviewers assessing the system at the request of site management concluded that the model was so strongly weighted to efficiency that it was unlikely that serious risks to human health or the environment could alter the sequencing of work. DOE officials said they revised the model so that serious risks receive greater emphasis.

#### *DOE’s Attempts to Develop a Risk-Based Approach Have Not Been Successful*

In response to concerns expressed by the Congress and others about the effectiveness of the cleanup program, DOE has made several attempts to develop a national, risk-based approach to cleanup, but has not succeeded. For example, in 1999, DOE

pilot-tested the use of site risk profiles at 10 DOE offices. The profiles were intended to provide risk information about the sites, make effective use of existing data at the sites, and incorporate stakeholder input. However, reviewers found that the site profiles failed to adequately address environmental or worker risks because the risks were not consistently or adequately documented. In 2001, DOE eliminated a support group responsible for assisting the sites with this effort, and the risk profiles are generally no longer being developed or used.

A 1999 DOE-funded study to evaluate its efforts to establish greater use of risk-based decision-making concluded that none of the attempts had been successful.<sup>8</sup> Common problems identified by the study included poor documentation of risks and inconsistent scoring of risks between sites. The study reported that factors contributing to the failure of these efforts included a lack of consistent vision about how to use risk to establish work priorities, the lack of confidence in the results by DOE personnel, the unacceptability of the approaches to stakeholders at the sites, and DOE's overall failure to integrate any of the approaches into the decision-making process. However, the study concluded that the use of risk as a criterion for cleanup decision-making across DOE's sites not only was essential, it was also feasible and practical, given an appropriate level of commitment and effort by DOE.

*Accelerated Schedules in DOE Initiative Signal the Need to Develop a Risk-Based Approach*

DOE plans to shift its cleanup program to place greater focus on rapid reduction of environmental risk, signaling yet again the need for a national risk-based approach to cleanup. Without a national, risk-based approach to cleanup in place, DOE's budget strategy had been to provide stable funding for individual sites and to allow the sites to determine what they needed most to accomplish. However, in a February 2002 report, DOE described numerous problems with the environmental management program and recommended a number of corrective actions.<sup>9</sup> The report concluded that, among other things, the cleanup program was not based on a comprehensive, coherent, technically supported risk prioritization; it was not focused on accelerating risk reduction; and it was not addressing the challenges of uncontrolled cost and schedule growth. The report recommended that DOE, in consultation with its regulators, move to a national strategy for cleanup. In addition, the report noted that the compliance agreements have failed to achieve the expected risk reduction and have sometimes not focused on the highest risk. The report recommended that DOE develop specific proposals and present them to the states and EPA with accelerated risk reduction as the goal.

DOE's new initiative provides additional funds for cleanup reform and is designed to serve as an incentive to sites and regulators to identify accelerated risk reduction and cleanup approaches. DOE's fiscal year 2003 budget request includes a request for \$800 million for this purpose. Moreover, the Administration has agreed to support up to an additional \$300 million if needed for cleanup reforms. The set-aside would come from a reduction in individual site funding levels and an increase in the overall funding level for the cleanup program. The money would be made available to sites that reach agreements with federal and state regulators on accelerated cleanup approaches. Sites that do not develop accelerated programs would not be eligible for the additional funds. As a result, sites that do not participate could receive less funding than in past years.

To date, at least five major DOE sites with compliance agreements have signed letters of intent with their regulators outlining an agreement in principle to accelerate cleanup—Hanford, Idaho, Los Alamos, Oak Ridge, and Nevada Test Site. However, the letters of intent generally also include a provision that the letters do not modify the obligations DOE agreed to in the underlying compliance agreements. At Hanford, DOE and the regulators signed a letter of intent in March 2002 to accelerate cleanup at the site by 35 years or more. DOE and the regulators agreed to consider the greatest risks first as a principle in setting cleanup priorities. They also agreed to consider, as targets of opportunity for accelerated risk reduction, 42 potential areas identified in a recent study at the site. While accelerating the cleanup may hold promise, Hanford officials acknowledged that many technical, regulatory, and operational decisions need to be made to actually implement the proposals in the new approach.

<sup>8</sup> Consortium for Risk Evaluation with Stakeholder Participation, *Peer Review of the U.S. Department of Energy's Use of Risk in Its Prioritization Process*, (New Brunswick, NJ: Dec. 15, 1999).

<sup>9</sup> U.S. Department of Energy, *A Review of the Environmental Management Program*, (Washington, D.C.: Feb. 4, 2002).

DOE is proceeding with the selection and approval of accelerated programs at the sites, as well as identifying the funding for those accelerated programs. At the same time, DOE is considering how best to develop a risk-based cleanup strategy. DOE's Assistant Secretary for Environmental Management said that in developing the risk-based approach, DOE should use available technical information, existing reports, DOE's own knowledge, and common sense to make risk-based decisions. Because DOE's approach to risk assessment is under development, it is unclear whether DOE will be able to overcome the barriers encountered during past efforts to formalize a risk-assessment process. In the interim, DOE headquarters review teams were evaluating the activities at each site and were qualitatively incorporating risk into those evaluations.

COMPLIANCE AGREEMENTS WERE NOT A BARRIER TO PAST MANAGEMENT IMPROVEMENTS, BUT IMPACT ON FEBRUARY 2002 INITIATIVE IS UNCLEAR

Compliance agreements have not been a barrier to previous DOE management improvements, but it is not clear if the agreements will be used to oppose proposed changes stemming from the February 2002 initiative. DOE has implemented or tried to implement a number of management initiatives in recent years to improve its performance and address uncontrolled cost and schedule growth. For example, in 1994, it launched its contract reform initiative; in 1995, it established its privatization initiative;<sup>10</sup> and in 1998, it implemented its accelerated path-to-closure initiative. These initiatives affected how DOE approached the cleanup work, the relationship DOE had with its contractors, and, in some cases, the schedule for completing the work. Based on our review of past evaluations of these initiatives and discussions with DOE officials and regulators at DOE sites, it appears that DOE proceeded with these initiatives without significant resistance or constraints as a result of the compliance agreements.

Because DOE's cleanup reform initiative is in its early stages, and site-specific strategies are only beginning to emerge, it is unclear how the site compliance agreements will affect implementation of DOE's latest cleanup reforms. For example, it is not yet known how many sites will participate in DOE's initiative and how many other sites will encounter cleanup delays because of reduced funding. However, early indications suggest caution. Parties to the agreements at the sites we visited were supportive of DOE's overall efforts to improve management of the cleanup program, but expressed some concerns about proposals stemming from the February 2002 review of the program. They said that they welcome DOE's efforts to accelerate cleanup and focus attention on the more serious environmental risks because such initiatives are consistent with the regulators' overall goals of reducing risks to human health and the environment. Most regulators added, however, that DOE generally had not consulted with them in developing its reform initiative and they were concerned about being excluded from the process. Furthermore, they said DOE's initiative lacked specific details and they had numerous questions about the criteria DOE will use to select sites and the process it will follow at those sites to develop an implementation plan to accelerate cleanup and modify cleanup approaches.

Most regulators said they would not view as favorable any attempt by DOE to avoid appropriate waste treatment activities or significantly delay treatment by reducing funding available to sites. In such a case, these regulators are likely to oppose DOE's initiative. They told us that they most likely would not be willing to renegotiate milestones in the compliance agreements if doing so would lead to delays in the cleanup program at their sites. In addition, these regulators said that if DOE misses the milestones after reducing the funding at individual sites, they would enforce the penalty provisions in the compliance agreements.

The effect of compliance agreements on other aspects of DOE's initiative, especially its proposal to reclassify waste into different risk categories to increase disposal options, is also unclear. Some of the proposed changes in waste treatment would signal major changes in DOE assumptions about acceptable waste treatment and disposal options. For example, one change would eliminate the need to vitrify at least 75 percent of the high-level waste, which could result in disposing of more of the waste at DOE sites. In addition, DOE is considering the possibility of reclassifying much of its high-level waste as low-level mixed waste or transuranic waste

<sup>10</sup> DOE's privatization was intended to reduce the cost of cleanup by attracting "best in class" contractors with fixed price contracts that required contractors to design, finance, build, own, and operate treatment facilities and to receive payments only for successfully treating DOE's wastes.

based on the risk attributable to its actual composition.<sup>11</sup> However, at all four sites we visited, regulators said that it is unclear how DOE's proposed initiatives will be implemented, what technologies will be considered, and whether the changes will result in reduced cost and accelerated cleanup while adequately protecting human health and the environment.

DOE generally did not seek input from site regulators or other stakeholders when developing its latest initiative. DOE's review team leader said that when the review team visited individual sites, the team had not formulated its conclusions or recommendations and so did not seek regulators' views. Furthermore, the team leader said that, during the review, DOE was holding internal discussions about improving ineffective cleanup processes, such as contracting procedures. To include regulators on the review team during these discussions, according to the team leader, could have created the impression that the criticism of DOE processes came from the regulators rather than from DOE and contractor staff. According to the Associate Deputy Assistant Secretary for Planning and Budget, since the review team's proposals were made public in February, DOE has held discussions with regulators at all sites and headquarters about implementing the proposals.

In summary, Mr. Chairman, DOE faces two main challenges in going forward with its initiative. The first is following through on its plan to develop and implement a risk-based method to prioritize its various cleanup activities. Given past failed attempts to implement a risk-based approach to cleanup, management leadership and resolve will be needed to overcome the barriers encountered in past attempts. The second challenge for DOE is following through on its plan to involve regulators in site implementation plans. DOE generally did not involve states and regulatory agencies in the development of its management initiative. Regulators have expressed concerns about the lack of specifics in the initiative, how implementation plans will be developed at individual sites, and about proposals that may delay or significantly alter cleanup strategies. Addressing both of these challenges will be important to better ensure that DOE's latest management initiative will achieve the desired results of accelerating risk reduction and reducing cleanup costs.

Thank you, Mr. Chairman and Members of the Subcommittee. This concludes my testimony. I will be happy to respond to any questions that you may have.

Mr. GREENWOOD. Thank you, Ms. Jones.

The Chair recognizes himself for 10 minutes for questions, and let me start with you, Ms. Roberson, if I may.

In order to measure whether a cleanup project has been accelerated, a detailed cost and schedule baseline must already be in place at the DOE site in order to accurately measure schedule or cost improvement. Does DOE have a detailed cost and schedule baseline in place for accelerating cleanup projects at each of the large DOE sites, including at Oak Ridge and Los Alamos?

Ms. ROBERSON. Mr. Chairman, the Department at this point is going through a transition and putting into place the accelerated cleanup plan. There are existing baselines at all of the sites. The accelerated cleanup plans and our estimate of their impact is based upon accelerating the work as defined in those baselines.

The next step in our progress, which our sites are going through now, is to put together the crosswalk from the existing baseline to the accelerated cleanup plan. At that point we would do a complete revised baseline to reflect that accelerated cleanup plan. So our estimates of savings, both in time and resources, is really based upon the path that we have been on, but we do have more work to do that complete crosswalk.

Mr. GREENWOOD. Thank you. Also for you, Ms. Roberson, as I understand it, a State must sign a Letter of Intent with you to accelerate high-risk projects, and then you will set aside additional funds for cleanup at those sites.

<sup>11</sup> Currently, DOE classifies this high-level waste based on the treatment process that created the waste.

The State of South Carolina recently signed a two-page Letter of Intent and you committed to set aside \$216 million in additional cleanup funds next year for the Savannah River site. That is a pretty good return. It is about \$108 million for each page of the agreement. Are these Letters of Intent a genuine commitment from the States, and are you ready to withhold money if the State refuses to make the necessary changes to accelerate cleanup?

Ms. ROBERSON. Thank you, Mr. Chairman. First of all, let me say that the details behind the Letters of Intent are pretty extensive. The Performance Management Plan for the Savannah River Site was already developed and undergoing public comment by the time we signed the Letter of Intent, and it is fairly thick. There are certainly many more details that support those Letters of Intent. And the Letter of Intent is but one part of the process, the next step is the demonstration of commitment of the parties to accelerate the cleanup. The Performance Management Plan details the specific actions. And for Savannah River Site, that Performance Management Plan is undergoing its final review and revision in cooperation with the regulators.

Again, I would say this is not just a paper process. We have exerted tremendous energy and time and resources in conjunction with our regulatory parties, to review in detail what we are proposing to do. I myself spent a week at Savannah River along with my counterpart in EPA and the head of the Environment Department of South Carolina reviewing those details and plans and looking each other in the eye to ensure that each of us was committed to going forward. There is tremendous detail behind the Letters of Intent. They are simply the start of the process, but much more information is available.

Mr. GREENWOOD. And with regard to the second part of my question, are you ready to withhold money if the State later refuses to make the necessary changes to accelerate cleanup?

Ms. ROBERSON. The administration has been clear. The commitment for additional funds is based upon the acceleration of the work, and I believe the Administration has been clear. The funding is not to be released until the Performance Management Plans document how that accelerated work will be carried out.

Mr. GREENWOOD. As you know, DOE and the States can agree to accelerate cleanup, but the contractors are the ones who actually perform the cleanup work. Do you believe that DOE's contractors will follow through and accelerate cleanup?

Ms. ROBERSON. I believe that DOE will follow through to ensure that happened. I would like to attack all elements of our business systems at the same time. The approach that we have taken is to clearly define the work that we want done, establish the performance measures that demonstrate we are getting it done, and align our acquisition strategy to support that.

Mr. GREENWOOD. Are you going to use performance-based incentive contracting to ensure that contractors prioritize cleanup consistent with these new cleanup plans?

Ms. ROBERSON. That will be our key acquisition strategy, yes, sir.

Mr. GREENWOOD. Let me ask a question of Ms. Jones that just occurred to me. What risk criteria or risk factors has the EM pro-

gram established and used to prioritize projects for accelerated cleanup at the sites, at the different sites?

Ms. JONES. It is our understanding at this point, Mr. Chairman, that those kinds of risk factors have not been put together. We have been told that they are working on those, but there is no strategy at this point in time.

What they are developing is, just as Secretary Roberson said, site-specific management plans which are going to lay out what the risks are, but those site-specific plans need to be rolled up and DOE needs to look across the Nation in terms of what the risk-based strategy should be.

Mr. GREENWOOD. Do you concur, Ms. Roberson?

Ms. ROBERSON. I do concur. I would add one element. The Environmental Management program has utilized a risk ranking system for how it assigned its resources in the past. I have reviewed that system and it is still relevant. The difference is that, it did the risk ranking, it did not follow through in applying those resources based upon the results of the ranking. And so that is the gap we have to fill and that is what we are proceeding to do.

Mr. GREENWOOD. This is not on my official list of questions, but how do you deal with political pressure if you, based on risk, determine what the priorities should be and a Member of Congress—House or Senate or Delegation—applies pressure to alter that and “put money in my project first,” how do you deal with?

Ms. ROBERSON. Well, that is an interesting question.

Mr. GREENWOOD. That is why it wasn't on my list.

Ms. ROBERSON. Let me tell you how I would deal with it and what experience I have had so far. I do find, just as with our regulators—and I have certainly have had the opportunity to spend time with many Members of Congress on this and the specific activities in their States—and what I have found is, given the opportunity to actually review and discuss where the risks are and what the priorities should be and why it makes sense, I truly have experienced tremendous support both from the Congress and from the States.

Mr. GREENWOOD. We are educable.

Ms. JONES. Mr. Greenwood?

Mr. GREENWOOD. Yes?

Ms. JONES. Could I also mention I think your question also leads to the point of why any risk-based strategy needs to be extremely transparent particularly to the stakeholders. And I think that DOE has to come forward with adequate documentation of risk, a clear basis for classifying risk, and then also a consistent scoring between sites, if you are going to have a national strategy, and that must be very transparent to the stakeholders.

Mr. GREENWOOD. I quite agree, and it does make it a lot easier to resist any undue political pressure, if you have a clearly delineated system.

Secretary Roberson, in the written testimony of Tennessee's Oversight Program Director, Mr. John Owsley, he described a contentious issue between DOE and Tennessee regarding shipments of mixed waste out of Oak Ridge to the Waste Isolation Pilot Plant. Mr. Owsley points out that DOE has recently changed its mixed waste regulations and will not recognize Tennessee's ability to en-

force mixed waste shipment schedules to WIPP. Can you explain the situation?

Ms. ROBERSON. Well, Mr. Chairman, I will not attempt to go beyond what I know because I think this is a legal issue more so than an operational issue. There is no disagreement that the Department is obligated to dispose of transuranic waste at the Oak Ridge Reservation, and we are committed to do that. There is a legal issue as to whether that is legally regulated under RCRA. So, it is a legal issue, not an operational issue.

Mr. GREENWOOD. Okay. Again, Ms. Roberson, according to the GAO report, there are about 70 compliance agreements among the DOE sites, and some DOE sites have multiple compliance agreements. Why are there so many agreements, and why can't we consolidate multiple agreements within the State?

Ms. ROBERSON. In some cases, I understand the history as to why there are so many agreements. I won't venture to try to explain that because it really ends up being a different set of circumstances for different sites. In some cases, it is a lack of performance on a commitment where the cleanup commitment has ended up being captured in a court-ordered agreement.

What we are accomplishing in the accelerated cleanup initiative, though, is integration of the work covered by those agreements in almost every case that I am aware of, which I do believe achieves the same result.

Mr. GREENWOOD. Do I see nodding, Ms. Jones, that you concur with that?

Ms. JONES. Yes, I would agree that if the management plans are going to integrate those compliance agreements, that would be a really good step. And as Assistant Secretary Roberson said, there are a number of reasons for this. Some compliance agreements are looking at RCRA compliance, some are looking at CERCLA compliance, and also, as she said, there are court-ordered agreements. So there are a number of different reasons why there are many different ones.

Mr. GREENWOOD. When you have multiple agreements at one site, can they be consolidated?

Ms. ROBERSON. I would say not all agreements can physically be consolidated, but the strategy as reflected by the milestones and commitments in those agreements can be integrated. I think it is very difficult to go back and try to redo or remove a consent order. I don't know quite how to do that, but what we have achieved in conjunction with our regulators is integration of our commitments so that we don't have conflicting requirements or conflicting commitments. They all relate to a similar strategy.

Mr. GREENWOOD. Thank you very much. The Chair recognizes the gentleman from Florida for 10 minutes.

Mr. DEUTSCH. Thank you, Mr. Chairman. If I can make a unanimous consent request that members who are not here could submit statements for the record.

Mr. GREENWOOD. Without objection.

Mr. DEUTSCH. Thank you, Mr. Chairman.

Ms. Jones, in your testimony, you seem to express some skepticism about whether DOE will be able to overcome the barriers en-

countered in the past to formalize a risk assessment approach to cleanup. Would you describe those barriers?

Ms. JONES. I think one of the barriers that we identified and others have identified in the past is that when it was tried there wasn't adequate documentation. There really wasn't a systematic approach to assessing risk either within a site or across a site, and DOE didn't really use it as part of its overall decisionmaking plan. I think there were also some problems with stakeholder buy-in. So, those are the kinds of things that I mentioned earlier that we need to make sure are put in place as we move forward this time.

Mr. DEUTSCH. Are there any other—I mean, the focus?

Ms. JONES. I think those are the larger issues.

Mr. DEUTSCH. Okay. You mentioned that this new plan would result in leaving more waste onsite and therefore reduce cleanup cost. Have the States agreed to leave more waste onsite?

Ms. JONES. The States at this point in time have agreed in principle with these Letters of Intent, that the goal is to accelerate cleanup, focus on a risk-based strategy, and to have it cost less. I don't think the States or the regulators have signed up to anything in terms of how they are going to implement that, which would include leaving more waste on-site.

Mr. DEUTSCH. Ms. Roberson, do you want to respond?

Ms. ROBERSON. Well, I think I agree with Ms. Jones. However, I would say that our goal isn't to leave more waste onsite. When you look at the baseline plans that were in place, there are a number of questions that the baselines had not addressed that we are attempting to address now. So, to some degree, the representation that we are proposing to leave more waste onsite, I simply disagree with. We are focused on going to the end so we know what we have to deal with.

Mr. DEUTSCH. Ms. Jones, you mentioned that DOE intends to reclassify waste into different categories so that you have more treatment options. Should we assume this means a lesser standard of treatment?

Ms. JONES. I don't believe so, Mr. Deutsch. I think those details are to be worked out. I think what DOE is talking about is that currently they classify waste based on how it was produced, not based on what the constituents actually are, and they are relooking at that approach. I think that DOE would still intend to stay within RCRA or CERCLA law in deciding what they need to do with this waste.

Mr. DEUTSCH. Would it revise the compliance agreements with the State?

Ms. JONES. Excuse me, sir?

Mr. DEUTSCH. Would it revise the compliance agreements with the—

Ms. JONES. Would it require revisions to—

Mr. DEUTSCH. Correct, revise them.

Ms. JONES. At this point in time it is a little too early to tell, but I think it would generate the need to revise compliance agreements if, in fact, the approach or the technology was going to be different. That might impact the milestones, it might impact the activities that they were going to be going forward with.

Mr. DEUTSCH. Ms. Roberson, do you want to respond?

Ms. ROBERSON. I would appreciate the opportunity.

Mr. DEUTSCH. Go ahead.

Ms. ROBERSON. I think the compliance agreement mostly focused on this subject is the Tri-Party Agreement in Washington State. If I can take just a minute to explain the structure of that agreement.

The Tri-Party Agreement establishes a three-tier tank waste retrieval process. The first step is to retrieve as much waste per tank as technically possible. The second step is to compare the retrieval result for each tank to the Tri-Party Agreement goal of 99-percent removal. The third step is if less than 99 percent retrieval can be technically achieved, the Tri-Party Agreement contains a process by which DOE may request an alternative end-point for that tank. And the State is a party to that process. That is captured in our Tri-Party Agreement.

Mr. DEUTSCH. In theory, Ms. Roberson, many of your ideas about prioritizing site cleanups based on the level of risk posed by a particular site makes sense. However, it has been our experience in the past that no site and no Member of Congress representing that site wants to lose annual cleanup dollars to another site that DOE decides presents more risk.

The only solution seems to be adding more dollars to the critical sites, not detracting from the less critical sites. Is DOE willing to add substantial dollars to accomplish this task?

Ms. ROBERSON. I believe DOE has demonstrated in its request that it is committed to do so, where the risk is commensurate with that need.

Mr. DEUTSCH. Approximately how much will that be?

Ms. ROBERSON. That is dependent upon the risk associated with each site.

Mr. DEUTSCH. So there is no dollar amount at this point?

Ms. ROBERSON. I couldn't quote you a dollar. I can certainly provide you details for the record.

[The following was received for the record:]

#### FUNDS ASSOCIATED WITH RISK AT SITES

Under the approach being taken by the Department, signed Letters of Intent between the Department and both Federal and State regulators are being developed and executed that articulate the vision, principles, collaborative work anticipated, and the parties' commitment to achieve accelerated cleanup and risk reduction. To date, we have signed eight Letters of Intent with the appropriate State and Federal regulators for ten sites. The sites and proposed corresponding additional funding set aside are: Hanford Site, Washington \$433M; Savannah River Site, South Carolina \$216M; Idaho National Engineering and Environmental Laboratory, Idaho \$110M; Oak Ridge Reservation, Tennessee \$105M; Los Alamos National Laboratory, New Mexico \$54M; Nevada Test Site, Nevada \$33M; Sandia National Laboratory, New Mexico \$8M; Waste Isolation Pilot Plant, New Mexico \$14M; Pantex Plant, Texas \$5M; and Amchitka Site, Alaska \$2M.

Additional Letters of Intent are in process. Funds will be set aside upon completion of the process at these additional sites.

The Department has prepared Performance Management Plans that delineate the time-lines, strategies, and funding profiles to demonstrate how DOE will achieve accelerated cleanup and risk reduction. Performance Management Plans endorsed by the regulators, must be in place before cleanup reform account funds are made available.

Mr. DEUTSCH. GAO's report, though, has told us that an additional \$300 million will come partially from reduction from individual site funding. How much of the additional \$300 million is actually new money?

Ms. ROBERSON. I'm sorry, I thought your question was by site. Well, the \$300 million is totally new money, but let me say also that we have—

Mr. DEUTSCH. Go ahead, I am sorry.

Ms. ROBERSON. There is additional money within the base budget for Environmental Management that is also going to cleanup that was not going to cleanup previously. We have identified activities that we, for instance, in Headquarters, did not need to continue to carry out because the activities did not directly support cleanup.

Mr. DEUTSCH. Can you try to clarify just for a second, is that new money or is it money from a reduction in the individual site funding? Ms. Jones? Can we just try to clarify that? Is it new money or is it just reduction money, the \$300 million number?

Ms. JONES. I think that—and, Ms. Roberson, correct me if I am wrong—I believe that a portion of that is new money and a portion of that is a reduction across-the-board.

Mr. DEUTSCH. Do we know what percentage?

Ms. ROBERSON. Let me check with staff, just a moment, Mr. Deutsch. Maybe I can clarify that, sir. The \$300 million is new money.

Mr. DEUTSCH. Right, but I guess the GAO has told us that it comes partially from a reduction in individual site funding. Ms. Jones?

Ms. JONES. Mr. Deutsch, I apologize, we will have to provide that number for the record.

[The following was received for the record:]

DOE's environmental management funding request for fiscal year 2003 included a \$5.9 billion base amount and a \$0.8 billion cleanup reform appropriation (set-aside) amount. The total of those amounts is \$6.7 billion, which is equal to DOE's fiscal year 2002 environmental management budget authority. Therefore, the \$0.8 billion set-aside proposed for fiscal year 2003 can be viewed as coming from a reduction in site funding levels when compared to fiscal year 2002 funding levels. The \$300 million in additional environmental management funding that the Administration is now prepared to support for fiscal year 2003 would be funding above the amount provided in fiscal year 2002.

Mr. DEUTSCH. The increase—I guess if we are talking about \$300 million, this is an increase of about 2 percent or so to the total cleanup budget. Is that sufficient, in the \$300 million number, do we know at this point or are we still in the dark? The \$300 million number.

Ms. ROBERSON. Is that sufficient for what?

Mr. DEUTSCH. For the cleanup that we are looking at in terms of using the risk assessment, and it is a 2 percent accelerated cleanup.

Ms. ROBERSON. Let me, sir, explain. There are three elements to our budget. There is a \$5.9 billion base budget which is a maintenance and a compliance budget. There is \$800 million in the initial request for the accelerated cleanup account. And then \$300 million requested in a budget amendment, for a total of \$1.1 billion for accelerated cleanup. So there is an increase—I believe what the GAO was citing was the difference between the base budget and the accelerated account. Some portion of that, based upon spending from previous years, appears to be old money, but in our accelerated cleanup plan we have gone even into the base budget to re-evaluate how we are spending and what is the reasonable distribution of

those funds. So, we did not just look at \$300 million, we did not just look at \$1.1 billion, we looked at the entire budget proposed for Environmental Management.

Ms. JONES. And if your question, Mr. Deutsch, is this enough funding to accelerate the cleanup that we are looking at, I think the way the Department is looking at it, the way we are looking at it, this is an incentive for the States, the regulators, to sign up for accelerated cleanup. There are a lot of activities that will be done with this money. Whether there could be more activities if there were more money, I think we would have to look at those individual sites.

Mr. DEUTSCH. Let me ask one final question. Ms. Roberson, one of the tenets of good management is that you consult with your stakeholders before making changes. Could you just describe the consultation with the State and Federal regulators before announcing the plan, and our understanding is they aren't particularly happy with it at this point in time.

Ms. ROBERSON. I will probably not speak for them since you have a panel. When the Top-to-Bottom review was released, there was a tremendous amount of consternation. It was released in conjunction with the budget, which probably complicated it even further.

The Secretary announced last spring that the top-to-bottom review was going to be undertaken. The team that conducted the review visited sites—it wasn't conducted in Washington, DC. The reviews was based upon data, information, discussions with those people carrying out the work. We released a report that said these are principles and strategic issues concerning the way the program is carried out. We believe that was our obligation to do in managing the program.

How you implement those concerns has been conducted in conjunction with our State and regulators and the public. The Performance Management Plan that contains the details of the activity that support accelerated cleanup have been the subject of public meetings, public comment. I think we have had very much a public process as a part of this program.

Mr. DEUTSCH. Thank you.

Mr. GREENWOOD. The Chair thanks the gentleman, and would ask unanimous consent to incorporate into the record a collection of Letters of Intent with the various States. Without objection, they will be incorporated into the record.

[The documents follow.]



**Department of Energy**  
Idaho Operations Office  
850 Energy Drive  
Idaho Falls, Idaho 83401-1563

#### Purpose

This letter documents the intent of the State of Idaho, the U. S. Environmental Protection Agency (EPA), and the U. S. Department of Energy (DOE) to pursue accelerated risk reduction and cleanup in the Environmental Management (EM) Program at the Idaho National Engineering and Environmental Laboratory (INEEL). The parties have established a focused vision for the accelerated cleanup strategy:

*By 2012, the INEEL will have achieved significant risk reduction and will have placed materials in safe storage ready for disposal. By 2020, INEEL will have completed all active cleanup work with potential to further accelerate cleanup to 2016.*

This vision reflects a bias toward real risk reduction within the framework of the existing compliance agreements that address cleanup of the INEEL. The parties recognize the importance of project management, engineering, science, and technology, to achieve cleanup goals faster and more cost effectively.

The parties agree that accelerated cleanup and meeting commitments are made more attainable with sufficient and predictable funding, good regulatory relationships, broad stakeholder support, and best management practices.

Through actions proceeding from this letter of intent, the parties expect to meet the objectives called for in the President's fiscal year 2003 budget request to access the Cleanup Reform Account.

#### Background

Cleanup of the INEEL is governed by two primary compliance agreements. These agreements include a bias toward actual cleanup; the parties agree to continue this bias and to integrate

cleanup activities at INEEL. The strategy outlined in this letter gives the INEEL the opportunity to accelerate risk reduction and cleanup and to do so from an integrated, site-wide perspective.

#### Overview of 2012 Accelerated Cleanup Strategy

In addition to the parties' recent agreement regarding restructuring of the waste retrieval project at Pit 9, the 2012 Accelerated Cleanup Strategy focuses on significant environmental priorities identified by DOE, the State of Idaho, EPA, and stakeholders. These priorities are:

1. Continued cleanup and protection of the Snake River Plain Aquifer
2. Consolidation of EM activities to the Idaho Nuclear Technology and Engineering Center (INTEC), reducing the actively managed EM footprint by over 51%
3. Removal and stabilization of sodium-bearing liquid wastes from the INTEC tank farm and RCRA closure of the high-level waste tanks
4. Placement of DOE spent nuclear fuel (240 tonnes) managed by EM into dry storage
5. Transfer of all Special Nuclear Material managed by EM to other sites
6. Completion of the shipments of transuranic waste required by section B.1 of the Settlement Agreement entered in *Public Services of Colorado v. Batt*, Nos. 91-0035-S-EJL & 91-0054-S-EJL (Oct. 17, 1995).
7. Making significant progress in the remediation of the buried waste in accordance with the comprehensive Remedial Investigation/Feasibility Study and Record of Decision for WAG 7

This strategy accelerates completion of several of these priority projects from the current baseline. It places material without a near-term disposition path (specifically spent nuclear fuel and high-level waste) into safe storage and ready for ultimate disposal. The cleanup approach also incorporates opportunities for dramatic footprint reduction within INEEL's major facilities. In developing this approach, it became clear that the cleanup program could rapidly consolidate its activities to the INTEC facility and significantly reduce infrastructure, surveillance, and maintenance costs.

End State

By 2020, all waste sites have been either: 1) removed and back filled or 2) capped; all EM-managed excess buildings have been transferred to another sponsor or removed; and remaining high-level waste calcine and spent nuclear fuel is in safe storage awaiting disposal.

This cleanup strategy accelerates the completion of key milestones in INEEL's compliance agreements and provides a basis for realistic, defensible, and stable cleanup funding. It provides a clear completion focus for cleanup by 2020 while not conflicting with other DOE missions at the INEEL; in fact, completing risk reduction and cleanup of the INEEL should facilitate opportunities for new and continuing missions.

DOE agrees to smoothly transition laboratory sponsorship from Environmental Management to other program sponsors. DOE also recognizes the need for long-term stewardship of site environmental obligations following completion of active cleanup.

This strategy can be accomplished within the existing compliance agreements but requires a proactive and sustained commitment by all three agencies to implement an integrated approach to regulatory issues so that projects can be accomplished as responsibly as possible.

In pursuing this strategy, the agencies agree to:

- Consider high risks first as a principle in setting priorities and cleanup strategies, recognizing there are multiple factors that need to be considered, such as balancing risk to workers, the public, and the environment
- Effectively integrate RCRA and CERCLA cleanup actions and schedules
- Re-sequence cleanup work as appropriate to better integrate cleanup actions at INEEL facilities
- Evaluate post-cleanup monitoring and review cleanup effectiveness from an integrated, INEEL-wide perspective
- Invest in projects and activities that will result in significant savings that can be applied to accelerate cleanup
- Accelerate waste characterization to facilitate decision making and integration opportunities

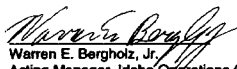
Further, the parties agree to approach cleanup as a single project and support integration across INEEL's compliance agreements as appropriate. DOE will produce, in collaboration with EPA and the State of Idaho, a draft management plan supporting this approach in June 2002, and following public involvement, a final plan by August 1, 2002. The parties agree that routine senior management meetings will be held to assess the status and progress toward the accelerated goals and to assist in resolving issues and barriers that stand in the way of successful implementation.

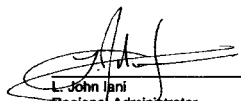
This accelerated cleanup strategy depends on successful resolution of several key uncertainties:


- Resolving repository issues such as characterization requirements and acceptance criteria
- Resolving transportation issues such as the need for waste stabilization prior to transport
- Resolving waste characterization issues
- Resolving the interpretation of section B.1 of the Settlement Agreement entered in *Public Services Company of Colorado v. Batt*, Nos. 91-0035-S-EJL & 91-0054-S-EJL (Oct. 17, 1995).


Nothing in this letter of intent modifies the rights, authorities or obligations established in existing agreements.

We, the undersigned, are committed to work together in support of these initiatives, to successfully implement this accelerated risk reduction and cleanup strategy, and to seek additional opportunities to further accelerate and improve cleanup of the INEEL.

  
Warren E. Bergholz, Jr.  
Acting Manager, Idaho Operations Office  
U. S. Department of Energy

  
L. John Iani  
Regional Administrator  
U. S. Environmental Protection Agency  
Region 10

  
C. Stephen Allred  
Director  
Idaho Department of Environmental Quality

  
Jessie Hill Roberson  
Assistant Secretary for  
Environmental Management  
U. S. Department of Energy

**LETTER OF INTENT**

May 13, 2002

**PURPOSE/VISION:**

This Letter of Intent documents a commitment by the State of Nevada, Division of Environmental Protection (NDEP) and the U.S. Department of Energy, National Nuclear Security Administration, Nevada Operations Office (NNSA/NV) Environmental Management (EM) program to accelerate its major environmental management project activities, with the exception of the Underground Test Area Project, to achieve fundamental cleanup completion of the Nevada Test Site by 2010 rather than 2020. Accelerated activities include Industrial Sites and Soils corrective actions required under the Federal Facility Agreement and Consent Order (FFACO); and the shipment of legacy transuranic waste to the Waste Isolation Pilot Plant (WIPP). Additionally, NNSA/NV EM and NDEP commit to implementation of the renegotiated strategy for the Underground Test Area and to explore further opportunities to accelerate UGTA activities. The parties also commit to continue to support the Department of Energy (DOE) Environmental Management (EM) mission of expedited cleanup. NNSA/NV EM will, operate its low-level waste and mixed-low-level waste disposal facilities for the DOE complex in compliance with all applicable Federal and/or State law(s). Additionally, this Letter documents previous agreements made by the Department with the State of Nevada and the NNSA/NV EM program as well as results of the Top-to-Bottom Review.


**PRINCIPLES:**

- NNSA/NV EM and its contractors will continue to ensure that all of their activities are conducted in accordance with Integrated Safety Management principles, compliant with applicable state and federal regulations, and are protective of human health and the environment. Risk reduction will be the primary focus of the program's activities.
- NNSA/NV EM and its contractors will take all necessary steps to accelerate cleanup activities and ensure these activities are properly funded. Accelerated cleanup at the NTS will be focused on the following:
  - Implementation of the previously negotiated acceleration of Industrial Sites corrective actions for a schedule acceleration of two years with cleanup anticipated to be completed in 2008.
  - Implementation of the recently renegotiated corrective action strategy regarding the Underground Test Area project and continue working with the state regulator and stakeholders to ensure project activities efficiently and effectively reflect the negotiated parameters.
  - Acceleration of plutonium contaminated soils corrective actions by 10 years at the recently negotiated (with the Air Force) correction action levels of 1000pCi/g based on a military land use scenario and an exposure dose level of 25mrem. Cleanup is anticipated to be completed in 2010.

- Acceleration of verification activities and the subsequent shipment of legacy transuranic waste to WIPP for a schedule acceleration of two years with closure of the project anticipated to be in 2007.
- NDEP will continue its long-standing constructive, cooperative partnership with the NNSA/NV EM program to ensure state regulator goals and objectives are met through expedited cleanup of activities under the purview of the FFACO. The regulator will provide proactive, appropriately focused, and timely review and comments on all applicable regulatory documents. In turn, NNSA/NV EM will ensure that all state oversight programs (cleanup and AIP) are properly funded to meet its obligations in support of the NNSA/NV EM program. The long-standing constructive cooperative working relationship between NDEP and NNSA/NV EM has positively effected changes in NNSA/NV EM priorities, strategies, work practices, and commitments; and created an environment for dealing with other issues, including ones having impact to the DOE complex.
- NNSA/NV EM will continue their stakeholder involvement program to ensure the public is appropriately involved in providing advice and recommendations regarding activities under the purview of NNSA/NV EM.
- The NNSA/NV EM program will, to the extent authorized by Federal and/or State law(s), operate its low-level and mixed-low-level waste disposal facilities. The NDEP will continue to process NNSA/NV's RCRA Part B Application for a disposal facility for mixed wastes from the complex, and it is anticipated that all requirements and programmatic issues related to the Application will be acceptably addressed and resolved by September 2003. The NDEP will continue to carry out its low-level waste oversight responsibilities in accordance with the Joint DOE/State Low-Level Waste Oversight Agreement, effective July 1, 1999, (Attachment X to the Agreement in Principle Between the Department of Energy and the State of Nevada).
- NNSA/NV EM and the state regulator will continue to evaluate opportunities under terms of the FFACO to improve cost and schedule performance of agreement activities.
- NNSA/NV and its contractors will complete an internal commitment document that focuses on accelerated cleanup and maintenance of waste disposal capability.
- NNSA/NV EM considers this Letter of Intent, together with achievement of the items delineated above, to meet the objectives called for in the President's fiscal year 2003 budget request for sites to reach new agreements with state and federal regulators to help accelerate and improve cleanup performance.
- DOE and its contractors will develop a Performance Plan by August 2002. The plan will include actions, milestones, responsibilities, business processes, and acquisition strategies necessary to achieve the agreements made in this letter. The Department recognizes that funding commensurate with the approved performance plan is necessary to achieve the above-stated goals of acceleration and closure. NDEP will review the performance plan to assure that the previously agreed to funding for the baseline scope of work as well as funding for the incremental accelerated cleanup activities are sufficient to implement this Letter of Intent.

NNSA/NV is actively engaged in implementing strong, aggressive project management and business/contract management within its activities, processes, and contracts to ensure cost-effective, efficient management and acceleration of activities under its purview. Using these systems, NNSA/NV EM will demonstrate its ability to achieve the actions described in this Letter of Intent.

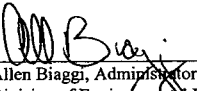
We, the undersigned, are committed to work together to implement these work plan agreements, the actions in this Letter of Intent, and to seek additional opportunities to accelerate and improve cleanup.

  
 Carl P. Gertz, P.E.  
 Assistant Manager  
 for Environmental Management

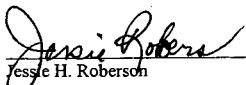
5/13/02  
 Date

KACarlson  
 Kathleen A. Carlson  
 Manager

5/13/02  
 Date

  
 Allen Biaggi, Administrator  
 Division of Environmental Protection  
 Department of Conservation and  
 Natural Resources

5/16/02  
 Date

  
 Jesse H. Roberson  
 Assistant Secretary  
 Environmental Management

5/23/02  
 Date

Letter of Intent  
Meeting Environmental Responsibilities  
At New Mexico DOE Facilities

The U.S. Department of Energy (DOE), New Mexico Environment Department (NMED), and U.S. Environmental Protection Agency (EPA), Region 6, are collectively committed to accelerating risk reduction and cleanup of environmental contamination at DOE facilities in New Mexico. When completed, the cleanup will: 1) result in reduced risk from New Mexico's legacy waste sites sooner; 2) allow the National Nuclear Security Administration's (NNSA) focus to remain on its core national security mission; 3) support Environmental Management's (DOE-EM) mission of expedited transuranic (TRU) waste cleanup at numerous sites by disposal of this waste in the Waste Isolation Pilot Project (WIPP) repository; and 4) provide a significant benefit to New Mexico and the nation by reducing the potential environmental, public and worker health, and security risks posed by TRU waste.

In light of the benefits to be obtained from the accelerated cleanup, the undersigned are committed to accelerating all environmental restoration, legacy waste disposal, and implementation of long-term environmental stewardship from 2009 to 2006 at Sandia National Laboratories (SNL), and from 2030 to 2015 at Los Alamos National Laboratory (LANL), and acceleration of TRU waste disposal from New Mexico facilities at WIPP.

Key Commitments to Ensure Success

All of the parties to this agreement commit to the following in order to achieve accelerated risk reduction and completion of cleanup:

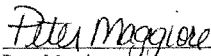
1. Accelerate risk reduction of groundwater and soil contamination, as well as legacy waste at both LANL and SNL, giving priority to the highest risk activities, by:
  - a. Implementing the "Quick to WIPP" strategy which would accelerate the removal and disposal of legacy TRU waste at LANL from 2030 to 2010 (addressing 61% of the radioactivity by 2004);
  - b. Implementing the watershed aggregate approach for environmental restoration at LANL, and accelerating completion of activities of the highest risk watershed and high priority Material Disposal Areas from 2022 to 2008 specifically, and total project from 2030 to 2015; and,
  - c. Completing the remaining risk reduction and resolving uncertainties, resulting in site acceleration of cleanup at SNL from 2009 to 2006.
2. Define regulatory endpoints for LANL and SNL:
  - a. Determine likely future use scenarios and associated cleanup standards;

- b. Pursue necessary actions to ensure long-term effectiveness of institutional controls;
  - c. Continue to improve the definition of data quality objectives and what constitutes sufficient and acceptable data for predictive modeling; and,
  - d. Plan and implement a Long-Term Environmental Stewardship program, working with our regulators and surrounding communities.
- 3. Continue the established partnership between DOE, its contractors, and regulators for LANL and SNL to:
  - a. Ensure senior-level involvement and support to achieve the desired end state; and,
  - b. Include expansion of high performance teams to focus on accelerated decision making and to optimize cleanup schedules.
- 4. Shorten review periods within the regulatory framework and provide timely decisions for project execution.
- 5. Streamline internal processes such as quality control and verification of data, preparation of regulatory documents, maximization of electronic commerce, consolidation and integration of databases, and elimination of duplicative processes.
- 6. Address resource issues by seeking additional state funding and pursuing new, more tractable hazardous waste fee regulations that provide sufficient (increased) regulatory resources.
- 7. Integrate DOE and NMED/EPA public participation for more efficient and effective public involvement.
- 8. DOE, NMED, and EPA are committed to the acceleration of risk reduction and the completion of the environmental cleanup program while at the same time being protective of site workers and the environment.
- 9. DOE, NMED and EPA further commit to pursuing and adopting innovative cleanup approaches that are protective of the environment and designed to achieve demonstrable risk reduction at a reasonable cost, therefore serving as an effective investment for the American taxpayers.

DOE and its contractors will develop a performance management plan by August 2002. The plan will include actions, milestones, responsibilities, business processes, and acquisition strategies necessary to achieve the agreements made in this letter. The Department recognizes that funding commensurate with the approved performance plan is necessary to achieve the above stated goals of acceleration and closure.

We the undersigned recognize the significant role New Mexico plays in addressing cleanup issues of national importance. By virtue of WIPP's presence, New Mexico plays a crucial role in reducing the risks posed by TRU waste nationwide.

We the undersigned are committed to an accelerated completion of the SNL and LANL environmental projects and the accelerated TRU waste disposal from New Mexico facilities at WIPP. We agree to the above working commitments to support this very important goal. We will continually seek and adopt additional opportunities that further advance the remediation and legacy waste mission in a safe, protective and cost effective manner.

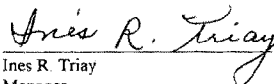


Peter Maggione  
Cabinet Secretary  
New Mexico Environment Department

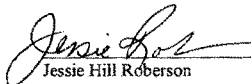
Gregg A. Cooke  
Regional Administrator (6RA)  
Environmental Protection Agency



W. John Arthur, III  
Manager  
Albuquerque Operations Office  
U.S. Department of Energy



Ines R. Triay  
Manager  
Carlsbad Field Office  
U.S. Department of Energy



*See attached  
EPA Signature.*

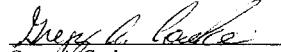
Jessie Hill Roberson  
Assistant Secretary  
for Environmental Management  
U.S. Department of Energy

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Jessie Hill Roberson  
Assistant Secretary  
for Environmental Management  
U.S. Department of Energy

**LETTER OF INTENT AMONG  
THE DEPARTMENT OF ENERGY, THE STATE OF TENNESSEE, AND  
THE ENVIRONMENTAL PROTECTION AGENCY**

**PURPOSE**

This letter of intent commits the state of Tennessee, the U.S. Environmental Protection Agency and the U.S. Department of Energy to accelerate cleanup at the Oak Ridge Reservation. Additionally, this letter of intent documents how the results of DOE's top-to-bottom review and other initiatives will be used to:

- Devise and implement a more efficient decision process,
- Develop integrated planning and funding requests, and
- Meet commitments under the Oak Ridge Federal Facility Agreement.

This letter evidences a transformation in the Oak Ridge cleanup effort, with the goal of completing cleanup in 2016 rather than 2021, with cleanup of specific high-risk activities by 2008. It establishes a bias for action and continuous improvement. It also recognizes and describes post-completion activities and commitments.

The parties intend to develop an integrated agreement in June 2002 that addresses all major issues at Oak Ridge under CERCLA and the FFA, including coordination of corrective actions under RCRA. It is not intended to contravene any requirement of any state or federal law.

**BACKGROUND**

- The recently completed top-to-bottom review at Oak Ridge identified a range of environmental management challenges, noted many areas needing improvements, and issued several calls to action to accelerate cleanup at EM sites.
- The Bush administration is prepared to increase site-specific budget requests to sites that accelerate cleanup. The administration expects that these near-term increases will decrease the needed level of future appropriations and more importantly substantially decrease the overall costs of cleanup to taxpayers.
- DOE, EPA, and Tennessee have been aggressively pursuing opportunities to accelerate the cleanup at the ORR and to make improvements. Yet poor communications and funding restraints have hindered these efforts. A fundamental shift in our shared approach to this effort is necessary to meet our shared goals.
- All three parties are focused on continuous improvement, seek better ways to complete cleanup, and have created a new framework to solve problems.

**UNDERSTANDING**

The following statements document the commitments and progress that have been made to date:

April 24, 2002

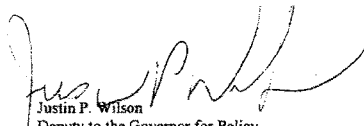
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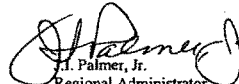
1. All parties want to fundamentally transform the project and accelerate risk reduction and cleanup at ORR to complete high-risk projects by 2006/2008 rather than the previously established 2014/2016 timeframe. This accelerated cleanup will be accomplished in a manner that is safe, protects human health and the environment, and complies with applicable Tennessee and federal laws.
2. DOE and its contractors bear the greatest responsibility to accelerate cleanup. DOE and its contractors agree to take all necessary steps to accelerate risk reduction and to apply as large a percentage as possible of the Oak Ridge site budget to accelerated cleanup.
3. All parties agree that we will be better equipped to accelerate cleanup and meet our commitments if we implement best management practices and have sufficient, stable, and predictable funding, good regulatory relationships, and broad support.
4. All parties agree to consider "risk reduction" when setting priorities and establishing cleanup strategies, recognizing Tennessee's preference for cleanup and other factors that need to be considered, including balancing risk to workers, the public, and the environment.
5. The specific initiatives to be included in the June 2002 agreement will at a minimum achieve the following results by 2008:
  - Completion of the activities in the Melton Valley Interim Record of Decision
  - Closure of East Tennessee Technology Park, including,
    - Completion of all remedial actions
    - Completion of decontamination and decommissioning
    - Relocation of depleted uranium hexafluoride cylinders
    - Disposition of waste
  - Completion of Other Priority High Risk Projects
    - Continue bioremediation of the Y-12 East End Volatile Organic Compound Plume
    - Construct and operate the 9201 water treatment system to reduce Y-12 mercury releases
    - Engineering study for Bethel Valley groundwater
    - Removal of spent nuclear fuel from Oak Ridge National Laboratory
    - Disposition of all legacy waste by 2004
6. The parties continue to value the importance of enforceable commitments to sustain progress. Modifications to the FFA will be made in the process established for them in the FFA as needed to enable more detailed plans and action assignments.
7. The use of onsite and offsite disposal facilities will be examined to maximize cleanup and minimize long-term stewardship requirements at Oak Ridge.
8. The June 2002 agreement will include further specific plans to accelerate cleanup and develop a comprehensive site-wide waste disposition strategy.
9. DOE will develop an internal letter of intent that focuses EM on accelerated cleanup as

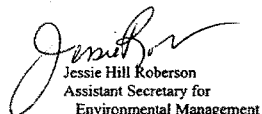
well as an internal letter between DOE and its prime contractors that focuses the contractors' efforts on accelerated cleanup. Both of these documents will be completed by July 1, 2002.


10. This letter, together with achievement of the above items, will allow the federal government to meet more rapidly its obligations to the people of Tennessee and the United States and will meet the accelerated cleanup agreement objectives called for by President Bush in his fiscal year 2003 budget request.
11. DOE will conduct routine meetings with all parties to assess the status and ensure ongoing support for accelerated cleanup at Oak Ridge. Summary evaluations will be provided to the under secretary or deputy secretary.
12. The principals will continue to meet regularly to ensure progress, solve problems, and identify new initiatives.
13. Nothing in this letter modifies any of the rights, authorities, or obligations currently stated in the FFA, except as it may be subsequently changed by mutual agreement.

We the undersigned are committed to work together to implement these work plan agreements and to seek additional opportunities to accelerate and improve cleanup.

  
Justin P. Wilson  
Deputy to the Governor for Policy  
State of Tennessee

  
J. Palmer, Jr.  
Regional Administrator  
EPA Region 4

  
Jessie Hill Roberson  
Assistant Secretary for  
Environmental Management  
Department of Energy

  
Michael D. Holland  
Manager  
Oak Ridge Operations Office  
Department of Energy



Tri-Party Agreement

March 5, 2002

**PURPOSE**

This letter of intent documents a commitment by the State of Washington, Department of Ecology; the U. S. Environmental Protection Agency; and the U. S. Department of Energy (DOE) to accelerate Hanford Site cleanup.

Additionally, this letter of intent documents how results of the Cleanup Constraints and Challenges Team (C3T), the Top-to-Bottom Review, and other improvements will be used to:

- ✓ Accelerate cleanup,
- ✓ Develop integrated planning and funding requests, and
- ✓ Meet commitments under the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement).

This represents a transformation in Hanford Site cleanup, with the objective of accelerating completion from a 2070 timeframe to 2035 and possibly as soon as 2025. It establishes a bias for action and continuous improvement throughout cleanup.

**BACKGROUND**

- The Top to Bottom Review (the Review) identified a range of Environmental Management (EM) challenges, noted many areas needing improvement, and issued several calls to action to accelerate cleanup at EM sites.
- The Administration is prepared to increase site-specific budget requests as sites demonstrate a transformational approach to accelerating cleanup with the expectation that the accelerations achieved by such near-term increases will lead to significant decreases in later years and substantially less costs to taxpayers overall.
- The C3T effort has been aggressively pursuing opportunities to accelerate the cleanup at Hanford and to make cleanup efforts more effective. This effort has to date identified 42 specific targets of opportunity for improvement and has demonstrated a mindset of continuous improvement and receptiveness to better ways to complete cleanup.
- The constructive working relationships among the C3T parties have already resulted in changes in priorities (such as those reflected in the proposed TPA change packages for the River Corridor and Central Plateau Waste Sites Cleanup milestones), strategies, work practices and commitments, and have created a framework for dealing with other issues.
- In addition, DOE has been actively engaged in fundamentally transforming how it conducts its business through contract and internal management processes at Hanford.
- The TPA was originally envisioned and has evolved as a living document, amenable to improvement as experience and new information are obtained. For example, if a new risk were discovered at the Hanford Site, we would expect the parties to take this information into consideration when updating the TPA.
- Seven specific C3T initiatives now being implemented focus on accelerated cleanup and demonstrate a transformational change to the way business is being conducted:
  - The Central Plateau Strategy and Vision
  - Accelerated Tank Waste Retrieval and Closure Demonstration
  - Hanford Tank Waste Treatment Strategy
  - Integrated Groundwater Monitoring, Assessment & Protection
  - Cesium/Strontium Capsule Disposition

- Improved Waste Management and Accelerated Waste Disposal Options
- DOE Work Practice Reform

#### UNDERSTANDINGS

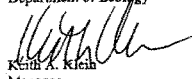
The following statements document the commitments and progress that have been made to date:

1. All Tri-Parties share a desire to fundamentally transform the project and a vision to accelerate risk reduction and cleanup of the Hanford Site from 2070 to 2035, and possibly as soon as 2025. Additionally, accelerated cleanup will be accomplished in a manner that is safe, protective of human health and the environment, and compliant with applicable State and Federal environmental laws.
2. DOE and its contractors bear the greatest responsibility to transform their business practices to accelerate cleanup. DOE and its contractors agree to take all necessary steps to accelerate risk reduction and to apply as large a percentage as possible of the Hanford Site's budget to accelerated cleanup as a continuing and ongoing process.
3. All Tri-Parties will be accountable for meeting their commitments. To this end, the Tri-Parties agree that accelerated cleanup and meeting our commitments are made more attainable with sufficient, stable, and predictable funding; good regulatory relationships; broad stakeholder support; and best management practices.
4. All Tri-Parties agree to consider *greatest risk first* as a principle in setting priorities and cleanup strategies, recognizing there are other factors that need to be considered including balancing risk to workers, the public, and the environment. In this regard, all Tri-Parties agree to aggressively evaluate and implement, where appropriate, the targets of opportunity for accelerated risk reduction identified by the C3T as well as actions identified by the Review.
5. The Hanford Site has presented plans for accelerated cleanup that meet the criteria for access to the Cleanup Reform Appropriation. These plans focus resources on closure and situations with the highest risk and include the following:
  - ✓ Accelerated waste retrieval and tank closure demonstration
  - ✓ Accelerated River Corridor Cleanup
  - ✓ Enhanced Waste Treatment Plant capabilities
  - ✓ Alternate Low Activity Waste form investigations
  - ✓ Accelerated plutonium deinventorying
  - ✓ Accelerated spent fuel basin cleanout
  - ✓ Improved waste management and accelerated disposal options
  - ✓ Accelerated transfer of Cesium/Strontium capsules from wet storage to passive dry storage
6. The Tri-Parties continue to value the importance of enforceable commitments to sustain progress and agree that as improvements are further demonstrated, further changes to the Tri-Party Agreement will be proposed under its existing change control processes.
7. The Tri-Parties agree that more detailed plans and action assignments will be needed to implement accelerated cleanup. As a first step to guide those efforts, DOE will develop a set of specific goals for physical progress by 2007 and 2012 that will represent a major acceleration from current plans. DOE will produce a draft work plan showing how these goals can be met by May 1, 2002, and the Tri-Parties hope to produce a mutually agreed to work plan by August 1, 2002. Changes will then be proposed to the Tri-Parties Agreement as appropriate.
8. DOE will need to develop an internal commitment that focuses EM on accelerated cleanup as well as a commitment between DOE and its prime contractors that focuses the contractors' efforts on accelerated cleanup. Both of these documents will be completed by May 1, 2002.

9. DOE considers this *letter of intent*, together with achievement of the items delineated above, to meet the objectives called for in the President's fiscal year 2003 budget request for sites to reach new agreements with State and Federal regulators to help accelerate and improve cleanup performance.
10. DOE will conduct routine meetings, chaired by the Assistant Secretary, to assess the status and ensure progress of DOE support to accelerated cleanup at the Hanford Site. Summary evaluations will be provided to the Under Secretary or the Deputy Secretary.
11. The principals will continue to meet regularly (approximately quarterly) to provide the leadership needed to ensure progress, solve problems, and identify new initiatives.
12. Nothing in this letter of intent modifies any of the rights, authorities, or obligations currently stated in the Tri-Party Agreement.

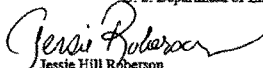
We, the undersigned, are committed to work together to implement these work plan agreements and to seek additional opportunities to accelerate and improve cleanup.

Tom C. Fitzsimmons, Director  
State of Washington  
Department of Ecology

  
Keith A. Kitch  
Manager  
Richland Operations Office  
U. S. Department of Energy

L. John Iani, Regional Administrator  
U. S. Environmental Protection Agency  
Region 10


Harry L. Boston  
Manager  
Office of River Protection  
U. S. Department of Energy

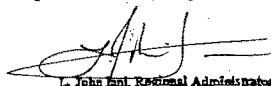
  
Jessie Hill Roberson  
Assistant Secretary  
for Environmental Management  
U. S. Department of Energy


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11. The principals will continue to meet regularly (approximately quarterly) to provide the leadership needed to ensure progress, solve problems, and identify new initiatives.
12. Nothing in this *Letter of Intent* modifies any of the rights, authorities, or obligations currently stated in the Tri-Party Agreement.


We, the undersigned, are committed to work together to implement these work plan agreements and to seek additional opportunities to accelerate and improve cleanup.

Tom C. Fitzsimmons, Director  
State of Washington  
Department of Ecology

  
Keith A. Rich  
Manager  
Richland Operations Office  
U. S. Department of Energy

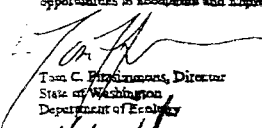
  
L. John Paul, Regional Administrator  
U. S. Environmental Protection Agency  
Region 10

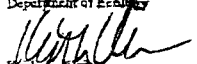
  
Harry L. Boston  
Manager  
Office of River Protection  
U. S. Department of Energy

  
Jessie Hill Robinson  
Assistant Secretary  
for Environmental Management  
U. S. Department of Energy


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Tom C. Fitzsimmons, Director  
State of Washington  
Department of Ecology

  
Keith A. Birch  
Manager  
Richland Operations Office  
U. S. Department of Energy

L. John Dini, Regional Administrator  
U. S. Environmental Protection Agency  
Region 10

  
Harry L. Boston  
Manager  
Office of River Protection  
U. S. Department of Energy

  
Jerald H. Robinson  
Assistant Secretary  
for Environmental Management  
U. S. Department of Energy

Letter of Intent  
05/08/02

Among the South Carolina Department of Health and Environmental Control (SCDHEC), the United States Environmental Protection Agency (EPA) and the United States Department of Energy (DOE) ("the Parties")

Background

The Parties agree that accelerating the reduction of risk and cleanup, in a cost-effective manner, is in the interest of the Parties and the people of South Carolina.

The Parties share a vision for Environmental Management (EM) activities at Savannah River Site (SRS) to accelerate completion of all cleanup by 2025, with an even further stretch goal of completing the cleanup by 2020.

The Parties have built a cooperative and effective relationship and base of success. The efforts contemplated herein will build on that success to mutual benefit, improving on the performance of a strong program. Such a commitment, including notably increased and sustained out-year funding, provides a truly significant opportunity to accelerate risk reduction and site cleanup.

The Parties agree that all activities will reflect the respective responsibilities of each, and will be done in compliance with applicable laws and regulations.

The Parties continue to value the importance of enforceable commitments to sustain progress.

The Parties agree, in setting priorities and cleanup strategies, to recognize, consider and include the principle of greatest risk, balanced by risk to workers, the public, and the environment.

Principles

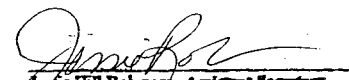
In the context of the above, the Parties will work together in a spirit of openness, consistent with the objective of accelerating risk reduction, to:

- Explore alternatives for material managed as high level waste and spent nuclear fuel.
- Provide for capabilities that will enable the acceleration of shipment of transuranic waste from SRS to the Waste Isolation Pilot Plant.
- Foster the identification of innovative approaches and technologies that will address environmental risk in a more effective manner than traditional approaches, using regulatory flexibility where appropriate to facilitate success.


- Provide for cost effective and timely stabilization of legacy PUREX solvent inventories.
- Allow for the effective and innovative treatment of ground water where new approaches can be demonstrated to be more efficacious than conventional remedies and comply with all applicable laws and regulations.

#### Implementation

The Parties agree that more detailed plans and action assignments will be needed to implement accelerated cleanup. As a first step to guide those efforts, DOE will develop a set of specific goals for physical progress in 2003 - 2008 as well as a performance management plan that demonstrates how SRS will complete cleanup work by 2020/2025. DOE will produce a draft work plan showing how these goals can be met by May 1, 2002, with a goal to produce a work plan by August 1, 2002.

  
Leslie Hill Robertson, Assistant Secretary  
for Environmental Management

 5-10-02  
Greg Rudy, Manager  
Savannah River Operations Office

 5/11/02  
R. Lewis Shaw, Deputy Commissioner  
South Carolina Department of Health,  
and Environmental Control

  
J. I. Palmer, Jr., Regional Administrator  
U.S. Environmental Protection Agency  
Region IV

Mr. GREENWOOD. The gentleman from Kentucky, Mr. Whitfield, is recognized for 10 minutes for inquiry.

Mr. WHITFIELD. Thank you very much. Ms. Roberson, let me just summarize what I understand is correct here so far. The base budget, which includes compliance and maintenance, \$5.9 billion, and an additional \$800 million for accelerated cleanup, and then a supplemental \$300 million added to that, so \$1.1 billion for accelerated cleanup.

Ms. ROBERSON. Yes, sir.

Mr. WHITFIELD. Okay. Now, in the GAO report, they indicated that there were 70 compliance agreements at 23 sites right now, is that correct?

Ms. ROBERSON. Yes.

Mr. WHITFIELD. Now, how many of those sites would be eligible for the accelerated cleanup? Would all of them be eligible?

Ms. ROBERSON. All sites are eligible.

Mr. WHITFIELD. All sites are eligible. And at this point, six sites have signed Letters of Intent. And then you said after the Letters of Intent, then there would be a Performance Management Plan for each site based on the accelerated plan. And how long have you all been negotiating with States to enter into accelerated cleanup plans?

Ms. ROBERSON. With the exception of Washington State, where those discussions started in the fall of last year, with most other States, started decisions early in the beginning of this fiscal year.

Mr. WHITFIELD. And the August 1 deadline was set at the very beginning so that everyone would have advance knowledge that this is the deadline?

Ms. ROBERSON. I would have to say we did not set an August 1 deadline originally. The program was rolled out with the budget in February of this year. We had already begun working at most of the sites, to ensure that we were able to achieve as much as possible. For implementation in fiscal year 2003, the Administration did subsequently establish a timeframe of August 1.

Mr. WHITFIELD. Now, I am assuming that if all 23 sites signed up, that there would not be sufficient money to do the accelerated cleanup. Is that correct or not?

Ms. ROBERSON. We believe there would be, and that is what our request is based on. Again, there is not a site where we do not have either a proposed strategy or the elements of a proposed strategy upon which to make that determination.

Mr. WHITFIELD. Now, who is negotiating with the State of Kentucky on the Paducah site?

Ms. ROBERSON. By name, our new Site Manager, Bill Murphie, is representing the Department. The authority for the State of Kentucky for Environmental Protection, Gen. Bickford, is the representative for the State, and then Regional Administrator Palmer for EPA. Those are the three individuals that conduct the formal negotiations.

Mr. WHITFIELD. Okay. Now, I know that the community of Paducah where this site is located, the elected officials, the civic officials, everyone else, are quite excited about having the opportunity to accelerate the cleanup, and they have gone to Frankfort and they have lobbied that the State enter into this Letter of Intent,

and so far that has not been accomplished. Do you have any idea yourself on precisely what is the hangup here, or what the problem is?

Ms. ROBERSON. Well, Congressman Whitfield, each site presents its own unique set of challenges, and we certainly have a unique set of challenges at Paducah. We have invested tremendous resources and time in this negotiation, and I would have to say the other parties have been at the table with us. I think that we are very close to an agreement.

What we found at Paducah, and Paducah is not the only State, is in some cases the parties would actually like to discuss the details of the plan before there is an agreement in principle on the strategy. And so there are Letters of Intent at some of the sites that are lagging behind the development of a Performance Management Plan, and this would be one of those sites.

Mr. WHITFIELD. Okay. But there is no Letter of Intent?

Ms. ROBERSON. There is no Letter of Intent. I think we are very close, though.

Mr. WHITFIELD. So what you are saying is, in Kentucky, like a lot of other sites, before the Letter of Intent is even signed, you are already kind of getting into a Performance Management Plan of how it would be done.

Ms. ROBERSON. Exactly.

Mr. WHITFIELD. Which is sort of putting the cart before the horse, but—and I am assuming—would they be doing that because there may be a lack of confidence that things will be done the way they hope they will be done?

Ms. ROBERSON. I think you are absolutely right.

Mr. WHITFIELD. Okay. Now, do you have any idea on what the exact amount of money that it would take to take care of the Paducah problem?

Ms. ROBERSON. At this point, I would say I do not, sir, because we still have a number of issues regarding the specific path for subprojects at that site.

Mr. WHITFIELD. Okay. Now, Mr. Deutsch indicated that under these plans, there is a possibility of leaving more waste onsite under the accelerated plan than would be left under the original plan, and you have indicated that is certainly not the intent, is that correct?

Ms. ROBERSON. That is certainly not the intent, and I would further say I believe that there may have been expectations, what we are proposing is to do a risk-based cleanup which is appropriate for the cleanup problems that we are attempting to address, and that there is not an overt attempt to leave waste in place. The goal is to do a risk-based cleanup that is protective of human health and the environment in every case.

Mr. WHITFIELD. Now, on the Kentucky site, as they are negotiating to develop a performance plan before the Letter of Intent, could you give me one or two areas that seem to be particularly hangup areas?

Ms. ROBERSON. A couple of areas that are hangups—one procedural area that we are continuing to negotiate over is the application of removal authority for cleanup. DOE, in establishing the cleanup agreement, agreed to a process, and DOE is a party to the

cleanup agreement. We believe that we now have experience to say that it hasn't worked as well for any of the parties or the communities around the site, and we are in discussions with the regulators to modify that process in the cleanup agreement.

There are other issues that are physical cleanup issues regarding the use of the landfill at that site, what materials may or may not go in. Those would be two real examples.

Mr. WHITFIELD. Okay. So, what can you bury at the landsite, on-site, and then what is the removal authority?

Ms. ROBERSON. Right, should there be modification to that removal authority process in the cleanup agreement.

Mr. WHITFIELD. What sort of modification?

Ms. ROBERSON. Well, this is obviously in negotiation, so you would only hear my view. My view is what we are seeking is the ability to implement removal authority as deemed necessary, and limit the procedural process before that. So, we would want to limit the amount of process necessary before taking a removal action.

Mr. WHITFIELD. So to expedite.

Ms. ROBERSON. Exactly.

Mr. WHITFIELD. And the State—I know you are not speaking for them, but obviously they don't want to expedite, or don't feel comfortable with expediting.

Ms. ROBERSON. Well, I would venture—to go back to your statement earlier, I believe their concern is whether they can trust us to undertake removal actions in their view, safely. We believe we can be trusted, but it is our job to convince the parties that we can.

Mr. WHITFIELD. Now, there has never been any legal action between the State or EPA and DOE at the Paducah site, has there?

Ms. ROBERSON. There are lots of legal action. Yes, sir. That is again a complication in this.

Mr. WHITFIELD. Okay. So, there are other existing judgments out there already—

Ms. ROBERSON. Well—

Mr. WHITFIELD. [continuing] or injunctions, or whatever?

Ms. ROBERSON. Particular to the cleanup, there are a number of issues regarding milestones in the current cleanup framework that are in dispute, which is what I would call a legal matter.

Mr. WHITFIELD. So, using your little crystal ball, what would you say the percentages are that you would reach an agreement with the State of Kentucky? Would there be an 8-out-of-10 chance, or 1-out-of-10?

Ms. ROBERSON. Congressman Whitfield, my crystal ball has failed in these things. I think that we will get there. I see a commitment to do so, but it is hard work. I believe that we can get there.

Mr. WHITFIELD. Good. Thank you.

Mr. GREENWOOD. The Chair thanks the gentleman, and thanks the witnesses, and excuses the witnesses. Thank you.

I would call forth the second panel. Our witnesses are Mr. Michael Wilson, who is the Program Manager for the Nuclear and Mixed Waste Program for Washington State Department of Ecology; Ms. Kathleen Trever, Coordinator and Manager of the INEEL Oversight Program from the State of Idaho, and Mr. John Owsley,

the Director of the Department of Energy Oversight Division, Tennessee Department of Energy and Conservation.

We welcome our witnesses. Thank you for joining us here today. You probably heard me mention to the other witnesses that we are holding an investigative hearing, and it is our custom and practice to take testimony under oath. Do any of you object to giving your testimony under oath?

[Noes.]

Mr. GREENWOOD. I need to advise you that pursuant to the rules of this subcommittee as well as the rules of the House that you are entitled to be represented by legal counsel. Do any of you wish to be advised by counsel?

[Noes.]

Mr. GREENWOOD. If you would rise and raise your right hand.

[Witnesses sworn.]

Mr. GREENWOOD. You are under oath and, Mr. Wilson, we will begin with you. You are recognized for 5 minutes.

**TESTIMONY OF MICHAEL WILSON, PROGRAM MANAGER, NUCLEAR AND MIXED WASTE PROGRAM, WASHINGTON STATE DEPARTMENT OF ECOLOGY; KATHLEEN E. TREVER, COORDINATOR/MANAGER, INEEL OVERSIGHT PROGRAM, STATE OF IDAHO; AND JOHN A. OWSLEY, DIRECTOR, DEPARTMENT OF ENERGY OVERSIGHT DIVISION, TENNESSEE DEPARTMENT OF ENERGY AND CONSERVATION**

Mr. WILSON. Good morning, Mr. Chairman and members of the committee. Thank you for this opportunity to testify today. My name is Mike Wilson and I manage the Nuclear Waste Program for the State of Washington Department of Ecology. That is the State of Washington's umbrella Environmental Protection Agency, and I have been in that role for about 7 years now.

The Tri-Party Agreement is at a crossroads. At Hanford, much of the preparatory work and planning called for in the original document is done. It is now time to adopt schedules for final accelerated cleanup of the nine production reactors, several massive plutonium production facilities, and 54 million gallons of highly radioactive waste in aging underground storage tanks.

In the late 1980's, Hanford was emerging from secrecy, self-regulation, and an emphasis on production over human and environmental health and safety. The Department of Energy had not been honest about the hazards at Hanford. It would have been grossly negligent for the State of Washington not to enforce its laws and regulations to protect human health and the environment.

Signing the Tri-Party Agreement in 1989 between the States, EPA and Energy to guide the cleanup was a major achievement. It was a mutual decision to work together rather than to fight and to spend money to fix problems rather than in court. At its core, the TPA gives the Department of Energy time to come into compliance with environmental laws. We realized that the site was so grossly out of compliance with several laws that there was no hope for a timely fix and that rigorous enforcement would achieve nothing.

The TPA brought flexibility to an otherwise rigid regulatory scheme, but the TPA holds Energy accountable for the cleanup of

Hanford and responsible for compliance with State environmental laws. Just like any other business or industry in the State, compliance is not discretionary.

Early on, the TPA did contain many milestones for plans and reports, not concrete cleanup. We didn't force rigid compliance dates on Energy when we didn't know how we were going to fix a problem or how long it would take. We admit it, we didn't know everything in 1989.

As we gained knowledge, we made changes, and so the TPA has been changed over 300 times since 1989. Only once have we been forced to issue a penalty for missing a milestone, and it was a big one for us—failure to start construction of the Tank Waste Treatment Plant last year. We reserved the “big hammer” for a big issue, and it was absolutely appropriate.

In the end, we will probably not collect a single dollar of that penalty because we accomplished our goal. Energy got back on schedule to meet the 2007 date of operation for that plant. Collecting fines is not what we are about, we are about getting cleanup done.

I would like to shift gears just a little and talk about our perspective on the plan to accelerate cleanup in Hanford. In the 13 years since signing the Tri-Party Agreement, we have had four Presidents, six Secretaries of Energy, and many Assistant Secretaries in Washington, DC, as well as several management teams at the Hanford site. With each change, there has been one constant—the initial assumption that oppressive regulation under the Tri-Party Agreement has constrained progress at Hanford. At least three times in the last 10 years, we have invested significant time working with the Department of Energy developing working relationships and educating them on the flexibility of the State of Washington and the Tri-Party Agreement. In each case, I believe the Department of Energy leadership has left with an appreciation of our reasonable and pragmatic approach and the flexibility of the Tri-Party Agreement.

Last summer, long before the official Headquarters approach to acceleration was in place, the State, EPA and the Hanford Site Managers engaged in a collaborative process to speed cleanup. Top management met several times and agreed on common principles and goals. Later, we negotiated new TPA milestones that support accelerated cleanup for much of the site. We were well along the course toward accelerated cleanup when the 2003 budget and accelerated cleanup account were announced this spring.

At Hanford, changes to the Tri-Party Agreement that came out of this collaborative process drove our response to Energy's accelerated cleanup plan, not the reverse. We have not given up anything in the form of reduced cleanup, nor do we intend to, nor were we “blackmailed” into negotiating away the Tri-Party Agreement on the promise of additional funds. At the same time, I think we were able to show the new Administration—especially Assistant Secretary Roberson—that the regulators and our agreement are flexible, but within clear limits.

We believe there can be smarter cleanup, more cost-effective cleanup, and accelerated cleanup within the terms of our agreement, but there cannot be—and what we will not accept—is less

cleanup. Less cleanup is not accelerated cleanup, it is just less cleanup.

Contamination left in the soil and groundwater under Hanford will remain a threat to the health of the people of the Northwest for hundreds, even thousands, of years. We will continue our vigilance, and we believe our Tri-Party Agreement provides the best framework for that vigilance. Thank you, Mr. Chairman. I will be happy to answer questions.

[The prepared statement of Michael Wilson follows:]

PREPARED STATEMENT OF MIKE WILSON, NUCLEAR WASTE PROGRAM MANAGER,  
WASHINGTON STATE DEPARTMENT OF ECOLOGY

Good morning Mr. Chairman and Members of the Committee. Thank you for this opportunity to testify today.

The Tri-Party Agreement is at a crossroads. Much of the preparatory work and planning called for in the original document is done. It is now time to adopt schedules for final, accelerated cleanup of the Columbia River Corridor, site of the nine production reactors; the Central Plateau where several massive Plutonium production facilities were located; and retrieval and treatment of the 54 million gallons of highly radioactive waste in Hanford's 177 aging underground storage tanks.

History:

Let me set the context for the Hanford Tri-Party Agreement.

In the late 1980s, the Department of Energy's nuclear facilities, including Hanford, were just emerging from a long history of secrecy, self-regulation, and an emphasis on production over worker, public and environmental health and safety. There was ample evidence that the Department and its predecessor agencies had not been honest about the hazards at Hanford, and that the cultural shift from the production-in-secrecy mode to environmental cleanup would not be easy. It would have been grossly negligent for the State of Washington not to have moved to enforce its laws and regulations to protect public health and the environment.

In this context, the 1989 signing of the Tri-Party Agreement between the State, EPA and Energy to guide this change and the cleanup was a major achievement—the nation's first Department of Energy complex regulatory agreement.

It was a mutual decision to work together rather than fight, and to spend money on fixing the problem not in court. We made the right choices in 1989. Since then the TPA has served both the people of the Northwest and the federal government well.

At its core the TPA gives the Department of Energy time to bring Hanford into compliance with basic environmental laws. We realized that the site was grossly out of compliance with the requirements of several laws with no hope for a timely fix and that rigorous enforcement would achieve nothing. The whole purpose of the TPA was to bring flexibility to an otherwise rigid regulatory scheme.

Beyond that our three basic goals for the TPA were: Bring current waste management practices up to present-day environmental standards; safely treat and dispose of hazardous wastes and contaminated facilities; and clean up areas where past practices spread contamination in the environment.

But the TPA has a broader role, too. We think of it as a contract with the people of Northwest that Hanford will be cleaned up. It is also a primary portal for those same northwesterners to influence priorities, end points and the balance of risk and cost at the site.

Early on, the TPA did contain many milestones for plans and reports—not concrete cleanup. It reflected the fact that we didn't know everything in 1989. We didn't force rigid compliance dates on Energy when we didn't know exactly how we were going to fix a problem or how long it would take. We knew we had to be flexible on both sides in order to be successful. And so the TPA has been changed over 300 times since 1989. Nearly all of those changes have given Energy more time to accomplish the cleanup goal—something that has been pointed out to us by our stakeholders.

We have used the dispute process outlined in the TPA many times also, and in most cases we have reached agreement. Only once have we been forced to issue a penalty for missing a milestone—and it was a big one for us—failure to start construction of the tank waste treatment plant last year. We reserved the big hammer for a big issue and it was absolutely appropriate. In the end we will probably not collect a single dollar of the penalty because we accomplished our goal: Energy got

back on schedule to meet the 2007 start of operations milestone in the TPA. We're not about collecting fines. We're about getting cleanup done.

The TPA has kept us out of much more trouble than it has created. A vision of what the world might have looked like without the TPA is the result of Energy failing to pump liquids from the old single shelled underground tanks on time. We took the issue to federal court when it looked like the TPA would not do the job. We wasted countless hours of technical staff time and costly attorney time in getting to a court filed agreement. It's a good agreement and one that Energy has been careful to honor. But the burdensome process, the inflexibility of the result and the cost in time lost to productive cleanup should tell us this is not the way to go.

I'd like to reiterate and leave you with two points to remember on the Tri-Party Agreement: First, it has been very flexible and dynamic, constantly adjusting to new technologies and information gained from experience.

And second, the Tri-Party Agreement is a device designed to give the Department of Energy extra time to come into compliance with federal and state laws. But Energy will be held accountable for the cleanup of Hanford and responsible for compliance with state environmental laws, just like other businesses or industries in the state. Compliance is not discretionary.

#### PLANS FOR ACCELERATION:

I'd like to shift gears a little and talk about our perspective on and involvement in the plan to accelerate cleanup at Hanford.

In the 13 years since signing the Tri-Party Agreement, we've had four presidents, six Secretaries of Energy and many Assistant Secretaries in Washington D.C. We've also had several management teams at the Hanford site. With each change there has been one constant: the initial assumption that oppressive regulation under the Tri-Party Agreement has constrained progress and, in fact, was a primary reason for the slow progress at Hanford.

At least three times in the last ten years we have invested significant time in working with the Department of Energy, developing working relationships and educating them on the flexibility of the State of Washington and the document that has served us so well—the Tri-Party Agreement.

In each case, I believe, the Department of Energy leadership has left with an appreciation for our reasonable and pragmatic approach and the flexibility of the TPA.

So when one of the first things we saw from Secretary Abraham was a letter to Governor Locke pointing to the need to re-look at "old inflexible agreements" our initial reaction, coming from a cynicism developed over the years, was "Here we go again..."

Last year, long before the Department of Energy headquarters driven approach to acceleration was in place, the State of Washington, the Environmental Protection Agency and both the Richland Operations Office and the Office of River Protection engaged in a process to speed cleanup. The Cleanup Constraints and Challenges process—or "C3T"—is a mutual attempt to accelerate cleanup and bring site budgets, work plans and contracts into alignment under the Tri-Party Agreement.

Our caveats on entering this process were that there must be a rededication to the TPA as the document guiding the Hanford cleanup AND that there would be no lessening of cleanup standards.

Starting last summer the top management of the three parties and site contractors met several times and agreed on common principles and goals. Applying those principles, we negotiated new TPA milestones throughout the fall and winter. We agreed to TPA changes that support accelerated cleanup along the Columbia River and on the Central Plateau. Separately, we also reached agreement on new milestones for constructing the Tank Waste Vitrification Plant. A substantial portion of the Tri-Party agreement was in play during that time.

We were well along a course toward accelerated cleanup when the 2003 budget and "accelerated cleanup account" were announced this spring. So, once the "official" accelerated planning process started we were able to quickly develop our "Letter of Intent" pledging to pursue several approaches to time and cost saving and began working with Energy on its Performance Management Plan.

In the case of Hanford the changes to the TPA that came out of our collaborative process drove the content of our Letter of Intent and much of the site Performance Management Plan—not the reverse. We have not given anything up in the form of reduced cleanup, nor do we intend to. Nor were we blackmailed into negotiating away the Tri-Party Agreement on the promise of additional cleanup funds. Funding or not, we expect Energy to meet its new TPA commitments.

At the same, time I think we were able to show the new administration, especially Assistant Secretary Roberson, that the regulators and our agreement are flexible—but within clear limits.

#### ADDITIONAL ISSUES:

There are many details yet to be worked out in this continuing story. Two examples:

*On Tank Waste Retrieval:* Reclassifying the tank waste and simply leaving it in place will be a major issue for us—we are not there at all. We have Tri-Party Agreement requirements that speak to retrieving waste from the tanks. The Department of Energy has agreed to conform to those requirements and use the TPA process. That commitment is included in the Performance Management Plan. But the proof of that process is yet to come. We expect that Energy will attempt to get at least 99% of the waste from each of the Hanford tanks per the TPA requirements.

*On Tank Waste Treatment:* There has been a great deal of skepticism about Energy's commitment to build the Tank Waste Vitrification Plant and to vitrify the tank waste. I'm extremely pleased at the start of construction of the vitrification plant this past week. This is a great event for all of us. Energy has talked about using other technologies to treat some of the tank waste. We are not opposed to exploring supplemental technologies that meet disposal and stability standards and speed waste treatment. We have agreed to take part in that exploration as long as the vitrification plant proceeds according to current plan. This is no time to once again change horses.

We believe there can be smarter cleanup, more cost-effective cleanup, and accelerated cleanup within the terms of our agreement. What there cannot be—and what we cannot accept—is less cleanup. Less cleanup is not accelerated cleanup—it's just less cleanup. Contamination left in the soil and groundwater under Hanford will remain a threat to the Columbia River and health of the people of the Northwest for hundreds, even thousands of years. We will be vigilant in protecting both the people and the River. And we believe our Tri-Party Agreement provides the best framework for our vigilance.

Thank you, Mr. Chairman and members of the committee for this opportunity to speak to you today.

Mr. GREENWOOD. Thank you, Mr. Wilson.

Ms. Trever, you are recognized for 5 minutes.

#### TESTIMONY OF KATHLEEN E. TREVER

Ms. TREVER. Thank you, Mr. Chairman. I appreciate the opportunity to share the State of Idaho's perspective with you today.

The INEEL played a key part in winning the cold war and advancing the use of nuclear power. While we encourage the continued use of these valuable capabilities, we also expect the Federal Government to address the sites environmental liabilities. Those liabilities include considerable quantities of spent nuclear fuel and plutonium-contaminated waste brought from other sites to Idaho for temporary storage, as well as contamination from activities on the site.

For more than 30 years, Idaho has worked to ensure DOE addresses these environmental liabilities to protect the State's major aquifer, a key water supply for drinking and agricultural uses, as well as other parts of Idaho's environment.

When faced with DOE's poor track record in honoring its cleanup promises and its lack of credibility, Idaho sought firmer commitments back in the 1980's and through the 1990's. When other options have not produced results, we have gone to court and used enforcement tools to protect our citizens. We prefer, however, to see our resources directed to actual cleanup instead of legal and administrative costs. That is why we have sought to negotiate mutually acceptable agreements to bring INEEL into compliance with environmental standards and fulfill its long-standing promises for

treatment and removal of waste from Idaho. These agreements have fostered considerable progress, and they have provided a public forum for discussion of cleanup.

The State and its regulatory agencies have worked with DOE to support innovative approaches and common-sense cleanup requirements, changing our agreements and restructuring activities, as appropriate, to achieve tangible results.

We have encountered some problems, however, as you noted in your opening statement, such as the Pit 9 project for demonstrating technology for buried waste retrieval. As DOE's own Top-to-Bottom assessment realized, these problems often stem from overly simplistic assumptions, DOE's internal project management, or a lack of clear focus on tangible results.

Tough cleanup problems remain, and we cannot make them magically disappear or indefinitely postpone our efforts to solve them. The costs, financial and otherwise, will only go up. We need a solid investment strategy for reducing uncertainties in moving forward.

We are now involved in DOE's efforts to develop Performance Management plans to accelerate INEEL cleanup within the framework of existing compliance agreements.

The collective desire of Congress, DOE, and States housing DOE facilities for sooner, safer, and more efficient cleanup is not new, it is one we strongly support, but there are certain steps essential to our success. We need dependable, sufficient funding, focused management attention, sound investments in science and technology, and improved public confidence in the cleanup process. While it is healthy to set aggressive goals for completing cleanup, we must not fool ourselves with creative accounting practices or simplistic assumptions.

Earlier DOE cleanup plans reduced environmental liabilities and risks on paper, but eroded confidence in them when rosy forecasts did not prove out. We are working with DOE to provide a realistic assessment of the nature and extent of the problems to be solved.

In our quest to reduce scheduling costs, we must still present investors in cleanup a clear understanding of programmatic risks, whether they involve unproven technology, regulatory assumptions, repository availability, decisions at other sites, or public challenge. We must also clearly define parameters for success that can remain consistent from one Administration to the next.

For acceleration initiatives to succeed, DOE will have to address interdependencies among sites. Idaho and other States, like my two colleagues here, have offered to serve as catalysts for collective discussions with sites through the National Governors Association's DOE Task Force.

Some reform proposals involve transferring materials or responsibilities to other Federal programs, so plans should recognize where costs are truly saved versus shifted elsewhere.

Idaho is committed to ensure INEEL cleanup is accelerated in a way that is compatible with the Department's larger mission objectives, and DOE has agreed to develop a strategy for making sure this occurs.

In closing, Idaho remains committed to meeting our cleanup goals for the INEEL as efficiently as possible, while ensuring we

preserve the Laboratory's capabilities. We are all investors in successful cleanup. To succeed, we will need more than general pronouncements of schedule and cost savings. We will have to evaluate our problems, recognize uncertainties, and determine how to get the maximum return on investment, accelerated cleanup and reduce risks. Thank you, Mr. Chairman.

[The prepared statement of Kathleen E. Trever follows:]

PREPARED STATEMENT OF KATHLEEN E. TREVER, ADMINISTRATOR, STATE OF IDAHO  
INEEL OVERSIGHT PROGRAM

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity today to share with you the State of Idaho's perspective on the Department of Energy's (DOE) initiative for accelerating cleanup of the Idaho National Engineering and Environmental Laboratory (INEEL) and related state-based compliance agreements.

My name is Kathleen Trever, and I manage the state of Idaho's program that monitors DOE activities in Idaho. I have been involved in issues related to the cleanup of the INEEL for over eight years.

OVERVIEW OF THE STATE'S PERSPECTIVE ON THE INEEL

The INEEL, one of DOE's major facilities, occupies land in eastern Idaho about the size of Rhode Island. Only 3% of the site's 890 square miles are used, resulting in a huge buffer zone, making the site an ideal place for developing and testing nuclear reactors.

The INEEL played a key part in winning the Cold War, developing a strong nuclear navy, and advancing the commercial use of nuclear power. While we encourage the continued use of the lab's valuable assets, we also expect the federal government to address the site's environmental liabilities.

ENVIRONMENTAL CHALLENGES INEEL FACES

Those liabilities include considerable quantities of spent nuclear fuel and plutonium-contaminated waste brought from other sites to Idaho for "temporary" storage, as well as contamination from on-site activities.

The damaged core from the Three Mile Island reactor, brought to the INEEL, so the nation's leading nuclear scientists could determine what went wrong and how to prevent similar incidents from occurring, remains stored in Idaho. Spent fuel from the nuclear naval fleet and other programs and locations is also at the INEEL waiting for a permanent solution.

Tens of thousands of barrels of plutonium-contaminated waste generated by the Rocky Flats Weapons site in Colorado and other facilities came to Idaho for decades. This waste, largely generated at other sites and stored at the INEEL, makes INEEL the largest stockpile of plutonium-contaminated waste in the nation, and perhaps the world. Also at the INEEL is liquid and solid high-level waste, which is both hazardous and radioactive. This waste presents particularly difficult challenges in terms of treatment, storage, transport and disposal.

These Cold War wastes and contamination from site activities now sit atop the Eastern Snake River Plain Aquifer. This Aquifer provides drinking water and supports much of Idaho's agricultural economy, including thousands of family farms, dairies, and a thriving aquaculture industry.

IDAHO'S EFFORTS TO ENSURE INEEL CLEANUP

For more than 30 years, Idaho has worked to ensure DOE addresses INEEL's environmental liabilities to protect the state's major aquifer and other parts of Idaho's environment.

For nearly two decades there were promises with little progress. Then, as a nation, we determined in the 1980s it was appropriate to hold our government accountable to most of the environmental standards we imposed on private industry. And we learned more about the contamination our nation had created to end the Cold War and use atoms for peaceful purposes.

When faced with DOE's poor track record in honoring its cleanup promises and its lack of credibility, Idaho sought firmer commitments. When other options have not produced results, we have gone to court and used enforcement tools to protect our citizens. We prefer, however, to see our resources directed at actual cleanup instead of legal and administrative costs.

That is why we sought to negotiate mutually acceptable agreements to bring INEEL into compliance with environmental standards and fulfill its long-standing promises for treatment and removal of waste from Idaho.

These agreements have fostered considerable progress. And they have provided a public forum for discussion of cleanup. The State and its regulatory agencies have worked with DOE to support innovative approaches and common sense cleanup requirements, changing our agreements and restructuring activities as appropriate to achieve tangible results.

INEEL's cleanup program is making great strides. Inventories of highly radioactive liquid waste have been cut by more than half. The damaged reactor core from Three Mile Island and other spent fuel has moved from aging storage pools to safer, dry storage. And shipments of Rocky Flats waste, stored in Idaho for decades, are now leaving Idaho for the WIPP repository in New Mexico.

We have encountered some problems, however, such as the Pit 9 project for demonstrating technology for buried transuranic waste retrieval, the subject of a hearing before this Subcommittee several years ago. As DOE's own Top-to-Bottom Assessment realized, these problems often stem from overly simplistic assumptions, DOE's internal project management, or a lack of clear focus on tangible results.

We cannot make DOE's toughest cleanup problems magically disappear or indefinitely postpone efforts to solve them. The costs, financial and otherwise, will only go up. We need a solid investment strategy for reducing uncertainties and moving forward.

#### EFFORTS TO FURTHER ACCELERATE CLEANUP

In May, Idaho entered into a letter of intent with DOE and EPA to support acceleration of INEEL cleanup. DOE recognized that existing agreements provide a reasonable and flexible framework for advancing our cleanup goals, and that we can save resources by not reinventing the wheel.

We are now involved in DOE's efforts to develop performance management plans to restructure INEEL cleanup work within the framework of existing compliance agreements.

The collective desire of Congress, DOE and states housing DOE facilities for sooner, safer and more efficient cleanup is not new. It's one we strongly support.

As we renew our commitment to sooner, safer and more efficient cleanup through our participation in DOE's accelerated cleanup initiative, there are certain steps essential to our success.

We need dependable, sufficient funding, focused management attention, sound investments in science and technology and improved public confidence in the cleanup process.

While it's healthy to set aggressive goals for completing cleanup, we must not fool ourselves with creative accounting practices or simplistic assumptions. Earlier DOE cleanup plans reduced environmental liabilities and risks on paper, but eroded confidence in cleanup investments when some of the rosy forecasts did not prove out. We are working with DOE to provide a realistic assessment of the nature and extent of the problems to be solved.

In our press to reduce schedule and costs, we must still present investors in cleanup a clear understanding of programmatic risks, whether they involve unproven technology, regulatory assumptions, repository availability, decisions at other sites or public challenge.

We must also clearly define parameters for success that can remain consistent from one administration to the next.

The state of EM's science and technology program causes some concern.

It is unclear today what criteria DOE is using to develop environmental management priorities for science and technology. For example, EM's Office of Science and Technology's latest proposed funding for FY2003 includes no INEEL projects, although such investments hold considerable potential for reducing the schedule and cost of two of the site's toughest, and most costly cleanup issues—high-level waste and buried plutonium-contaminated waste. The estimated baselines for these projects are over 10 years and billions of dollars.

If DOE does not investigate alternatives for these high-risk, high-cost baselines now, it will be locked into existing options to honor its commitments and keep from passing these problems onto the next generation.

Some reform proposals involve transferring materials or responsibilities to other federal programs, so plans should recognize where costs are truly saved, versus shifted elsewhere.

DOE began its reform process by negotiating with sites and states fairly independently. However, plans for the INEEL and other sites often depend on work in

other places for storage, treatment and disposal. For acceleration initiatives to succeed, DOE will have to address interdependencies among sites. Idaho and other states have offered to serve as catalysts for collective discussions with sites through the National Governors Association DOE Task Force.

Idaho is also committed to ensure INEEL cleanup is accelerated in a way that is compatible with the Department's larger mission objectives. DOE has agreed to develop a strategy for smoothly transferring laboratory functions from the Office of Environmental Management to other program sponsors.

In closing, Idaho remains committed to meeting our cleanup goals for the INEEL as efficiently as possible while ensuring we preserve the laboratory's capabilities for meeting our nation's security, energy, basic science and environmental needs.

We are all investors in successful cleanup. To succeed, we will need more than general pronouncements of schedule and cost savings. We will have to evaluate our problems, recognize uncertainties and determine how to get the maximum return on investment—accelerated cleanup that saves money and reduces risk.

Mr. GREENWOOD. Thank you.

Mr. Owsley.

#### TESTIMONY OF JOHN A. OWSLEY

Mr. OWSLEY. Thank you, Mr. Chairman and members of the subcommittee. I appreciate this opportunity to appear before you to discuss the Department of Energy's Environmental Management Program reforms and their impact on Tennessee compliance agreements.

Beginning in the late 1970's and continuing through the early 1980's, the State of Tennessee sought to exercise its rights to enforce State environmental standards at the self-regulated Federal facilities on the Department of Energy's Oak Ridge Reservation. The State initially met with stiff resistance from Federal authorities, but gradually, beginning in the mid-1980's, real progress has been made in environmental compliance.

DOE's 35,000-acre Oak Ridge Reservation is located in east Tennessee, along the Clinch River, and within the boundaries of the city of Oak Ridge. The Reservation played a major role in the production of materials for the Manhattan Project during World War II. Since the end of the cold war, the focus has shifted to cleaning up the legacy of nuclear weapons production.

Today, more than 45,000 Tennesseans live within five miles of the DOE facility. Tennessee expects the missions of the National Nuclear Security Administration's Y-12 Area Office and the Oak Ridge National Laboratory to continue and improve.

DOE is subject to most Federal environmental laws. Where DOE is self-regulating, the State of Tennessee is involved in non-regulatory oversight under the Tennessee Oversight Agreement. Tennessee Department of Environment and Conservation, referred to as TDEC, ensures that DOE complies with the Comprehensive Environmental Response Compensation and Liability Act through the Federal Facilities Agreement for the Oak Ridge Reservation. This agreement establishes environmental cleanup and restoration procedures and milestones for the Oak Ridge Reservation. The TDEC DOE Oversight Office plays the primary role in enforcing the obligations created under this agreement.

The Oversight Office also coordinates with other TDEC divisions to ensure that DOE does not cause excessive pollution to the air, water and land. For example, TDEC is federally authorized to carry out its own regulatory program for the Resource Conservation and Recovery Act, referred to as RCRA. Tennessee's RCRA

program consists of many statutes, rules and permits as well as a series of requirements contained in numerous enforcement orders issued to DOE.

Tennessee's primary concern is the protection of public health, safety and the environment. Tennessee, DOE, and EPA are working with stakeholders to address a number of problems related to these issues. There is groundwater contamination on and off the Oak Ridge Reservation. As a result, DOE is restricting its use. There are over 100 miles of contaminated rivers and streams that are being addressed through fish consumption advisories and other institutional controls. Over 130 acres of buried waste containing 40 million pounds of uranium and 6 million curies of buried radioactive waste remain on the Oak Ridge Reservation. Over 250,000 curies of radioactive waste have been discharged into surface streams from the Oak Ridge Reservation, and over 339,000 pounds of mercury were released from the Y-12 Plant into the East Fork Poplar Creek and the Clinch and Tennessee Rivers. There are six shutdown nuclear research reactors and over 400 other surplus deteriorating facilities that will have to be decontaminated and decommissioned or demolished. DOE also stores the largest inventory of its low-level radioactive waste, mixed low-level radioactive waste, and remote handled transuranic waste on the Oak Ridge Reservation.

For the past year and a half, the State of Tennessee and EPA have been in informal and formal dispute with DOE over the adequacy of DOE's commitment to the Oak Ridge Reservation cleanup. The dispute specifically involved DOE's unwillingness to commit to a reasonable level of work to remediate the Oak Ridge Reservation in a timely manner. In February 2002, DOE released a Top-to-Bottom Review of its Environmental Management Program which underscored the need to refocus DOE's cleanup effort on risk reduction and mortgage reduction and to execute work more quickly. Each of these needs was part of the State's dispute with DOE.

The State signed a Letter of Intent with DOE and EPA to formalize a commitment that would clean up high-risk sites at the Oak Ridge Reservation by 2008, and substantially complete the balance of the work by 2016. Completion was originally slated for 2021. The Letter of Intent also committed the State and EPA to work with DOE to develop a plan to implement accelerated cleanup on the Oak Ridge Reservation. The plan, signed on June 18, 2002, resolved the formal dispute between Tennessee, EPA and DOE by meeting the State's and EPA's requirement for more rapid cleanup at Oak Ridge.

The State of Tennessee uses a number of compliance agreements and commissioner's orders to enforce environmental regulations at the Oak Ridge Reservation. DOE's accelerated cleanup plan agreement does not change any existing agreements with Tennessee, nor does it create any new rights or remedies for either party. All previous orders issued to DOE and all agreements entered into by DOE and TDEC remain in effect and shall continue to be complied with by DOE.

That concludes my testimony. Again, I appreciate the opportunity to speak for the State of Tennessee.

[The prepared statement of John A. Owsley follows:]

PREPARED STATEMENT OF JOHN A. OWSLEY, DIRECTOR, DOE OVERSIGHT DIVISION,  
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Mr. Chairman and members of the subcommittee, I appreciate this opportunity to appear before you to discuss the Department of Energy's Environmental Management (EM) Program reforms and their impact on Tennessee compliance agreements.

Beginning in the late 1970's and continuing through the early 1980's, the state of Tennessee sought to exercise its rights to enforce state environmental standards at the self-regulated federal facilities on the Department of Energy's (DOE) Oak Ridge Reservation (ORR). The state initially met with stiff resistance from the federal authorities. But gradually, beginning in the mid-1980s, real progress has been made in environmental compliance.

DOE's 35,000 acre Oak Ridge Reservation is located in water-rich eastern Tennessee, along the Clinch River and within the boundary of the city of Oak Ridge. The reservation played a major role in the production of materials for the Manhattan Project during World War II. Since the end of the Cold War, the focus has shifted to cleaning up the legacy of nuclear weapons production.

Today, more than 45,000 Tennesseans live within five miles of a DOE facility. DOE is responsible for environmental management, research and development, uranium enrichment, defense programs and other activities on the Oak Ridge Reservation. Tennessee expects the missions of the National Nuclear Security Administration's Y-12 Area Office and the Oak Ridge National Laboratory to continue and improve.

DOE is subject to most federal environmental laws. The Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and other environmental laws all apply to DOE.

DOE is self-regulating under the Atomic Energy Act, which applies to many types of radioactive materials. However, under the Tennessee Oversight Agreement, the state of Tennessee is involved in non-regulatory oversight of DOE's radiological issues.

The Tennessee Department of Environment and Conservation (TDEC) ensures that DOE complies with CERCLA through the Federal Facilities Agreement for the Oak Ridge Reservation, which was signed by DOE, EPA and the state in 1992. The agreement establishes environmental cleanup and restoration procedures and milestones for the Oak Ridge Reservation. The TDEC DOE Oversight office plays the primary role in enforcing the obligations created under this agreement.

The oversight office coordinates with other TDEC divisions to ensure that DOE does not cause excessive pollution to the air, water and land. For example, TDEC is federally authorized to carry out its own regulatory program for RCRA. This federal authorization is granted only after EPA determines that state law is at least as stringent as federal law and regulations in the same area. Tennessee's RCRA program consists of many statutes, rules and permits as well as a series of requirements contained in numerous enforcement orders issued to DOE.

TDEC issued a commissioner's order to DOE in 1992 to assure the proper storage, treatment and disposal of hazardous pond waste. A TDEC consent order issued in 1993 modified storage and treatment permits regarding out-of-state waste from DOE-owned facilities. Another commissioner's order, issued in 1995, addresses mixed waste treatment and storage at all DOE facilities in Oak Ridge and established the Site Treatment Plan required by the Federal Facilities Compliance Act of 1992. A commissioner's order issued in 1999 led to a consent order with DOE that established a plan for DOE to pay a perpetual care fee to ensure resources are available to conduct necessary, long-term surveillance and maintenance activities at a CERCLA waste disposal facility. A 1999 consent order contains a plan that relates to the storage and disposition of uranium hexafluoride (UF<sub>6</sub>) cylinders located on the reservation. In addition, relevant state statutes and regulations are applied to DOE waste management and cleanup activities and several permits have been issued to DOE, including incineration of waste, treatment of wastewater and storage of hazardous wastes.

Tennessee's primary concern is the protection of public health, safety and the environment. Tennessee, DOE, and EPA are working with stakeholders to address a number of problems related to these issues. There is groundwater contamination on and off of the Oak Ridge Reservation. As a result, DOE is restricting its use. There are over 100 miles of contaminated rivers and streams that are being addressed through fish consumption advisories and other institutional controls. Over 130 acres of buried waste containing 40 million pounds of uranium and 6 million curies of buried radioactive waste, including deep well injection, remain on the Oak Ridge Reservation. Over 250,000 curies of radioactive waste have been discharged into surface

streams from the Oak Ridge Reservation. Over 339,000 pounds of mercury were released from the Y-12 Plant into the East Fork Poplar Creek and the Clinch and Tennessee Rivers. There are six shutdown nuclear research reactors and over 400 other surplus deteriorating facilities that will have to be decontaminated and decommissioned or demolished. DOE also stores the largest inventory of its low level radioactive waste, mixed low level radioactive waste and remote handled transuranic waste on the Oak Ridge Reservation (44 percent of the low level radioactive waste, 56 percent of the mixed low level waste and 76 percent of the remote handled transuranic waste).

For the past year and a half, the state of Tennessee and EPA have been in informal and formal dispute with DOE over the adequacy of DOE's commitment to the Oak Ridge Reservation cleanup. The dispute specifically involved DOE's unwillingness to commit to a reasonable level of work to remediate the Oak Ridge Reservation in a timely manner. In February 2002, DOE released a "Top-to-Bottom Review" of DOE's Environmental Management Program which underscored the need to refocus DOE's cleanup effort on risk reduction and mortgage reduction and to execute work more quickly. Each of these needs was part of the state's dispute with DOE.

The state signed a letter of intent with DOE and EPA to formalize a commitment that would clean up high risk sites at the Oak Ridge Reservation by 2008, and substantially complete the balance of the work by 2016. Completion was originally slated for 2021. The letter of intent also committed the state and EPA to work with DOE to develop a plan to implement accelerated cleanup on the Oak Ridge Reservation. The plan, signed on June 18, 2002, resolved the formal dispute between Tennessee, EPA and DOE by meeting the state's and EPA's requirement for more rapid cleanup at Oak Ridge.

DOE's accelerated cleanup plan agreement does not change any existing agreements with Tennessee, nor does it create any new rights or remedies for either party. All previous orders issued to DOE and all agreements entered into by DOE and TDEC remain in effect and shall continue to be complied with by DOE. The agreement is simply intended to establish a framework to promote cooperation between the parties and streamline the decision making process. This will allow the parties to achieve the accelerated goals documented in the Comprehensive Cleanup Proposal and Letter of Intent.

The state of Tennessee uses a number of compliance agreements and commissioner's orders to enforce environmental regulations at the Oak Ridge Reservation. These are described separately below as is the success of the enforcement action on the Oak Ridge Reservation cleanup.

#### LETTER OF INTENT AMONG THE DEPARTMENT OF ENERGY, THE STATE OF TENNESSEE AND THE ENVIRONMENTAL PROTECTION AGENCY

The letter of intent signed in May 2002 commits the state of Tennessee, the U.S. Environmental Protection Agency and the U.S. Department of Energy to accelerate cleanup at the Oak Ridge Reservation. The letter also documents how the results of DOE's top-to-bottom review and other initiatives will be used to devise and implement a more efficient decision making process, develop integrated planning and funding requests and meet commitments under the Federal Facility Agreement for the Oak Ridge Reservation. The letter outlines plans to clean up high-risk sites at the Oak Ridge Reservation by 2008 and substantially complete the balance of the work by 2016. Completion was originally slated for 2021.

#### OAK RIDGE ACCELERATED CLEANUP PLAN AGREEMENT

The agreement describes a streamlined decision making process to facilitate the accelerated cleanup of the Oak Ridge Reservation and establishes future actions needed to complete the cleanup. The agreement also resolved a formal Oak Ridge Reservation Federal Facility Agreement milestone dispute by providing enforceable milestones through fiscal year 2005. The agreement requires: a performance management plan to provide a management-level synopsis of how the proposed accelerated cleanup will be implemented; a comprehensive waste disposition plan; and a comprehensive cleanup plan for the balance of the program consisting of a baseline schedule that will include all of the DOE Oak Ridge Environmental Management milestones and activities planned to complete the accelerated cleanup plan through 2008 and the balance of the program projected through 2016. The agreement also lists those outstanding issues that are currently being addressed by the parties to the agreement.

## FEDERAL FACILITY AGREEMENT

The state of Tennessee, DOE, and EPA signed the Federal Facility Agreement for the Oak Ridge Reservation (FFA) in 1992. The agreement outlines a procedure for the reservation's cleanup, including problem identification, activity scheduling and implementing and monitoring appropriate responses. Actions taken under the FFA conform to CERCLA, RCRA and other federal and state laws. Under the FFA, the three agencies agree on a cleanup schedule, with clear deadlines for cleanup milestones. EPA and the state have the authority to penalize DOE when these deadlines are missed.

The FFA for the Oak Ridge Reservation has been successful. Examples of this success include:

- Approximately 35 separate remedial actions are complete;
- Several site-wide remedial actions are ready to be implemented as funding becomes available;
- Over 50 decision documents have been approved over the last ten years; and
- The state of Tennessee plays a pivotal role in the development and oversight of remedial actions.

The latest formal FFA dispute was undertaken because DOE's proposed scope for enforceable milestones for fiscal years 2002 through 2004 would not meet the expectations of the state of Tennessee and EPA. The Oak Ridge Accelerated Cleanup Plan Agreement resolved the dispute by integrating DOE Oak Ridge operations' planning and DOE headquarters funding requests. This integration allowed DOE to commit to substantial and enforceable milestones through fiscal year 2005.

## COMMISSIONER'S ORDER NO. 99-0438—EMWMF PERPETUAL CARE TRUST FUND

The Environmental Management Waste Management Facility (EMWMF) record of decision was signed in 1999. The commissioner's order was implemented to develop a trust fund to ensure resources are available to conduct necessary surveillance and maintenance activities at the facility to ensure long-term environmental protection. The order requires DOE to provide \$1 million per year for 14 consecutive years. DOE has been making these payments on schedule. The state of Tennessee maintains the fund. The state expects this fund to provide necessary resources for surveillance and maintenance beyond the closure date of the facility.

## COMMISSIONER'S ORDER 95-0514—SITE TREATMENT PLAN

The Site Treatment Plan was implemented in October 1995 through a commissioner's order, in compliance with the Federal Facility Act of 1992. This order effectively established a plan and process through negotiation between the state of Tennessee and DOE for establishing annual mixed waste treatment milestones to eliminate the huge 138 million pound mixed waste inventory stored at Oak Ridge. Annual implementation of this process from September 1995 through September 2001 has quite successfully reduced the massive inventory to 39 million pounds and will continue until all legacy mixed waste has been treated.

At issue now is DOE's commitment to Tennessee to commence shipments of mixed remote-handled transuranic waste in storage at Oak Ridge to the Waste Isolation Pilot Project (WIPP) facility beginning in January 2003. DOE has informed Tennessee that based on a previously unrevealed interpretation of federal regulation enacted in 1996 pertaining only to the WIPP facility itself that it will not recognize Tennessee's ability to enforcement of any sort of shipment schedule whether delayed by mutual agreement or not. Tennessee is willing to recognize a delay for securing access to the WIPP facility for remote-handled transuranic waste, and is prepared to fight to maintain its right to enforce a schedule of shipment.

## COMMISSIONER'S ORDER 99-0372—PORTSMOUTH CONTAMINATED SOILS

DOE's failure in FY 1998 to treat the milestone quantity of mixed waste at the TSCA incinerator resulted in another order with a civil penalty of \$500,000. As has become a tradition in Tennessee, an agreed order was jointly developed. The order required DOE to complete a supplemental environmental project instead of paying the cash penalty. Under this project, a legacy mixed waste stream of 3019 drums from Portsmouth, Ohio stored at Oak Ridge was removed from storage, transported and disposed of at Envirocare of Utah.

## COMMISSIONER'S ORDER 92-0412—RCRA PERMITTED STORAGE LIMITS

The terms and conditions associated with three state of Tennessee issued RCRA storage permits in 1992 caused an appeal by DOE, and resulted in a state issued

order. Ensuing discussions and negotiations resulted in an agreed order, which partially achieved the goals of both parties. Specifically, DOE can store off-site generated waste on-site up to 10 percent of the permitted capacity. Additionally Tennessee may limit storage time to less than 30 days, unless storage is incidental to treatment.

COMMISSIONER'S ORDER 97-0378/98-H0023—MANAGEMENT AND DISPOSITION OF URANIUM HEXAFLUORIDE AT THE EAST TENNESSEE TECHNOLOGY PARK (FORMER K-25)

This commissioner's order, signed on February 2, 1999, states that "DOE shall submit a plan containing schedules for activities that will ensure either removal of all known DUF6 cylinders and their contents from ETTP or conversion of the contents of such cylinders will be completed by December 31, 2009." There is approximately 60,000 tons of DUF6 stored outdoors at ETTP, some since the 1940s.

Closure of ETTP is one of the three cornerstones of the accelerated closure plan proposed by DOE. The accelerated closure plan cites 2008 as the target date for closure. In order to close ETTP, all of the approximately 7,000 UF6 cylinders must be removed. The accelerated closure plan will comply with the commissioner's order. However, important prerequisites include conversion capability to treat UF6, compensating states for emergency preparedness and transportation safety expenses and providing or funding transportation security.

While funding for the UF6 cylinder project has been included as a line item in the accelerated closure plan, there are many uncertainties due to the enormity of the project: adequate funding and adequate time for completion of the project are concerns; a conversion contract must be awarded, over-pack containers must be designed for transportation of the cylinders, and over-pack design must be approved by the Department of Transportation and the Nuclear Regulatory Commission; the involved states, including Tennessee, Ohio, and Kentucky, have not been assured that emergency management and transportation issues have been addressed; the states have not been assured that funding will be adequate for inspections, needed response operations, and training of local and state personnel in responding to potential accidents involving this radioactive material; DOE has not made a proposal to the states regarding interstate transportation and treatment of Tennessee's 60,000 tons of UF6; and the conversion contract award has been postponed several times putting ETTP closure planning at risk.

COMMISSIONER'S ORDER: CASE #91-3205—POND WASTE

This order was issued in 1992 because DOE violated the interim status standards for storage by storing 77,814 drums of listed hazardous waste, generated by the closure of K-1407-B and C ponds at K-25. DOE agreed to implement and complete a waste management plan consistent with the interim record of decision and the action plan. In lieu of the civil penalty of \$96,004, DOE agreed to remove and transport approximately 232 55 gallon drums of mixed waste, and 26 drums and 10 boxes of waste from the Witherspoon Superfund site in Knoxville, TN to K-25 for storage, treatment and/or disposal. The cost of this environmental clean-up project was estimated to exceed \$300,000.

COMMISSIONER'S ORDER 88-3434—ATOMIC CITY AUTO PARTS SITE

DOE is listed as a potential responsible party under state Superfund regulations because a major portion of the contaminants of concern at the Atomic City Auto Parts site came from material purchased from a DOE contractor. Soil contamination at the site includes but is not limited to arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, uranium, zinc, lithium and polychlorinated biphenyls (PCB's). DOE has prepared and submitted to TDEC a remedial investigation/feasibility study document. DOE has performed certain removal actions in compliance with the order, but residual contamination requires further action. TDEC has razed onsite buildings and completed two interim removal actions. A third phase interim removal is currently ongoing. Approximately 3,000 cubic yards of soil/debris are staged onsite awaiting final disposition. Subsequent removal actions are proposed after completion of Phase III and additional site characterization. DOE will reimburse TDEC for costs associated with the remedial action up to \$8 million.

COMMISSIONER'S ORDER 90-3443—DAVID WITHERSPOON, INC.; 90-3442 WITHERSPOON SCREEN ARTS SITE; 903444 WITHERSPOON LANDFILL SITE

DOE is listed as a potential responsible party under state Superfund regulations because a major portion of the contaminants of concern at the Witherspoon sites came from material purchased from a DOE contractor. The parties to the Federal

Facility Agreement (Tennessee, EPA and DOE) agreed to allow DOE to use the Environmental Restoration Benefit Assessment Matrix to set the priority of cleanup of the Witherspoon Landfill site, Witherspoon Screen Arts site and David Witherspoon, Inc, and to allow the sites to compete directly with FFA operable units for DOE ORO funding.

The David Witherspoon, Inc. site is located in a residential neighborhood in the Vestal community of South Knoxville. DOE has completed a remedial investigation/feasibility study of the property, confirming that onsite soils are grossly contaminated with heavy metals, PCB's, dioxins/furans and radioactivity. TDEC has reviewed the document and requested additional characterization work, primarily with respect to defining the extent of contamination.

Since promulgation, DOE and/or TDEC have completed several interim measures at the site, including placement of a fence and razor wire to restrict access, interim removals of drummed mixed waste and contaminated scrap and drainage diversion/control. A significant volume of scrap and debris that remains on the surface must be managed prior to initiating cleanup of the contaminated soil.

The Witherspoon Landfill site consists of approximately 50 acres, also located in the Vestal community of South Knoxville. DOE has completed a remedial investigation/feasibility study of the property. TDEC requested additional characterization to define the lateral extent of contaminant migration. Interim actions completed by DOE to date include various removals of contaminated scrap and placement of an interim cap over a small area of contaminated soil to prevent direct contact exposure.

TDEC has completed an interim removal of approximately 1,000 cubic yards of contaminated soil at the Witherspoon Screen Arts site. A remedial investigation/feasibility study is needed to comply with the requirements of the consent order.

#### COMMISSIONER'S ORDER PENDING—ROSCOE FIELDS PROPERTY

DOE is listed as a potential responsible party under state Superfund regulations because a major portion of the contaminants of concern at the Roscoe Fields' property came from material purchased from a DOE contractor. Contaminants of concern included 200 leaking drums containing Pyroquel threading oil), ethylene glycol and radiological contamination. TDEC completed an emergency removal action of the drums and incidentally contaminated soil. Waste materials were transported to the DOE reservation for storage. A commissioner's order from TDEC is pending to evaluate potential groundwater contamination resulting from uncontrolled releases on the site. DOE is required to reimburse TDEC for all cost associated with the removal action, including the current state overhead cost rate.

That concludes my testimony. I appreciate the opportunity to speak on behalf of the state of Tennessee.

Mr. GREENWOOD. Thank you, Mr. Owsley. The Chair recognizes himself for 10 minutes for questions.

Mr. Owsley, you talked about the releases of mercury and curies into the ground and surface water. Are there measurable environmental consequences that the State of Tennessee has determined either to the flora or fauna or to humans?

Mr. OWSLEY. There are measurable consequences. A double-edged sword for East Tennessee is that we're an extremely water-rich environment, and the dilution that is seen by discharge from the Oak Ridge Reservation into the Clinch and Tennessee Rivers are such that these levels do not create an imminent hazard to human health and the environment.

Mr. GREENWOOD. Do you have high levels of mercury in fish as a consequence, for instance?

Mr. OWSLEY. We have levels of mercury and PCB in fish that require fish consumption advisories both on and off the Oak Ridge Reservation.

Mr. GREENWOOD. Thank you. Mr. Owsley, this is a question I asked Ms. Roberson, and I want to get your response. You described a contentious issue between Tennessee and the Department regarding shipments of mixed wastes out of Oak Ridge to the

Waste Isolation Pilot Program. You point out that DOE will not recognize Tennessee's ability to enforce mixed waste shipment schedules to WIPP, even if those shipments are delayed, and that Tennessee is prepared to fight to enforce your scheduled shipments. Would you elaborate on that situation?

Mr. OWSLEY. Yes, sir. The Federal Facilities Compliance Act requires the Federal Government, including the Department of Energy, to treat the hazardous component of its mixed waste in storage, and the waste question here is transuranic waste that will have to be disposed of at the Waste Isolation Pilot Project Plant, and DOE, as required by the Act, entered into a site treatment plan with the Department of Energy in 1995. And in that plan, they established a series of milestones for the treatment and shipment of their mixed, remote-handled transuranic waste. At that time, it felt like that the necessary permitting to allow this material to be disposed of at WIPP would be in place. That permitting is not in place at this point in time.

So, in the State's opinion, DOE, rather than moving toward establishing the necessary permits to dispose of the remote-handled transuranic waste, moved to look for ways to eliminate the milestones.

According to the Compliance Act, DOE is required to comply with the Site Treatment Plan, as written. They have proposed to remove the milestones for shipment. The State of Tennessee has rejected that proposal. And, presently, we are still expecting shipments by January 2003, and if DOE fails to have the milestone extended or meet the milestone, the State of Tennessee does plan to take enforcement action.

Mr. GREENWOOD. Do you think it is going to happen, or do you think you will be able to work it through?

Mr. OWSLEY. Physically, it cannot happen by January 2003. We are prepared to work with the Department of Energy to work out a reasonable schedule. They have recently submitted the necessary paperwork to achieve modification of the permit to allow the remote-handled waste to be disposed of at WIPP. That is normally an 18 month to 2 year process. So, we have a reasonable time line that we could enter into with the Department of Energy, but we insist on having the enforcement capabilities.

Mr. GREENWOOD. Thank you. Ms. Trever, as you know, cleanup at your sites in Idaho requires DOE to coordinate with other DOE sites for waste disposal. Do you believe DOE has used an integrated approach in its negotiations with each State that recognizes the interdependencies among the sites?

Ms. TREVER. Mr. Chairman, so far the Department has been negotiating with States in a fairly independent fashion and, as you noted, it will require the States and the sites to ultimately come together. We have not embarked on that journey yet, but we fully expect that DOE will work with sites collectively, and it will need to do so in order to accomplish its objectives.

Mr. GREENWOOD. Thank you. Mr. Wilson, cleanup of the underground radioactive tank waste at Hanford is the Nation's most important cleanup project. The current cost estimate to clean up the Hanford tanks is \$49 billion. The compliance agreement between Washington State and DOE requires the Department to remove all

of the radioactive waste from the tanks. However, if we were to allow DOE to remove the most dangerous radioactive wastes and stabilize the remaining low-activity waste in place, we could adequately protect the environment and save billions of dollars. This would free-up more money for other cleanup projects at Hanford. What do you think about that?

Mr. WILSON. First of all, let me say that after 13 years of having the Tri-Party Agreement in place, we have begun—Department of Energy began construction of Hanford's tank waste Vitrification Plant last week. And if it weren't for the fact that it was 104 or 105 degrees out there, we would have been pouring a lot more cement these last weeks, and I think this is something to be celebrated and Department of Energy to be congratulated for.

On leaving waste in place, we are not there with the Department of Energy if they propose that. We have a process in place, in the Tri-Party Agreement, that Ms. Roberson alluded to, and that is they must attempt to first get a minimum of 99 percent of the waste out of each of Hanford's tanks, and then we can—if it is technically infeasible, then we can talk to them about that.

Through our Performance Management Plan at Hanford, we have in place a process for testing that Tri-Party Agreement process, and the Department of Energy has agreed to that. The removal of tank waste has not yet been tried, and the Tri-Party Agreement process has not yet been tried. I think it is way too early to be talking about how much waste to leave in place before we have ever tried to get any waste out of the tanks.

Along those same lines, as far as doing risk-based cleanup, we don't have near enough information about the situation, the geologic situation, around those tanks, to be making those kinds of decisions at this point.

We have been asking for a number of years for the Department of Energy to do the necessary investigations to start making those kinds of determinations, and we don't yet have that information in place.

Mr. GREENWOOD. Thank you. Back to you, Ms. Trever. Your written testimony states that you are working with DOE on an accelerated cleanup plan "within the framework of existing compliance agreements." The statement seems to indicate that the State of Idaho is not ready to change existing compliance agreements. Are you willing to alter commitments made in consent orders or compliance agreements in order to accelerate cleanup?

Ms. TREVER. Mr. Chairman, let me explain what I meant by "framework of existing agreements." Each of those agreements does provide mechanism for fine-tuning or changing goals or changing schedules based on changes in circumstances, whether they be budgetary, political, social or technical. And the mechanisms are in place to deal with changes in circumstances.

The cleanup goals themselves will remain the same, but we have considerable flexibility in how we ultimately achieve those goals, and why it is important from our perspective to work within the framework of existing compliance agreements. Since there are tools already in place that have sufficient flexibility, we want to use them and focus our resources on actual on-the-ground cleanup

rather than investing in additional negotiation or administrative process.

Mr. GREENWOOD. Thank you. Let me ask a question and ask each of you to respond to it. Each of you has signed a Letter of Intent with DOE. Do you believe this initiative will assure your site of additional accelerated cleanup funds for next year and in subsequent years? We will start with you, Mr. Wilson.

Mr. WILSON. In my testimony, I indicate that this was never done with the intention of achieving anymore cleanup funds for the State of Washington. We started this process before the accelerated cleanup account, and that approach was in place.

We expect that the Tri-Party Agreement changes that we have made that have led to the Letter of Intent and to the Performance Management Plan, that the Department of Energy will meet those obligations—their obligations—regardless of funding. And we assume that when they enter into a contract with us, that the funds will come.

Although we had no promise of any money when we entered this process, when the budget and the accelerated cleanup account were in place, we did think in terms of helping Hanford qualify for those funds should they become available.

Mr. GREENWOOD. Ms. Trever?

Ms. TREVER. Mr. Chairman, those of us that have worked in this issues for more than one Administration recognize that with each Administration there may be some change in initiatives. So it is difficult to predict much beyond the current budget cycle in terms of whether a particular initiative will be sustained.

I would echo Mr. Wilson's comments that we have agreements in place and expect DOE to honor those commitments. We do think there is considerable promise in the acceleration initiative and a new spirit of cooperation on the part of the Department to work out ways of achieving the goals sooner, safer, and more efficiently, and we are committed to working with them on that and do expect, given what we have seen, although we are still developing details, to be eligible for cleanup funds in the next fiscal year.

Mr. GREENWOOD. Mr. Owsley.

Mr. OWSLEY. As noted earlier, the State of Tennessee and the Environmental Protection Agency have been in informal dispute with DOE over the past year and a half, over their level of commitment in cleanup. We have had in place since December of 2001 decisions that all three parties agree to, yet DOE would not commit to the funding in order to implement those cleanup projects. As a result of the accelerated cleanup reforms, DOE felt like it was able to commit to those levels of cleanup and, in fact, have committed to 3 years of enforceable milestones. The State of Tennessee now has enforceable milestones with the Department of Energy through 2005. So, we feel comfortable that DOE has signed up to milestones that they will meet.

Mr. GREENWOOD. Thank you. Recognize the gentleman from Florida for 10 minutes.

Mr. DEUTSCH. Thank you, Mr. Chairman. The GAO has testified that under the new plan, waste may be reclassified so it can remain onsite or have lesser cleanup. Is this your understanding of the plan for each of your States? Mr. Wilson?

Mr. WILSON. This is not our understanding of the plan from the State of Washington, I testified to that also. I think we need to be careful when we talk in terms of leaving waste onsite versus things like leaving waste in place, which is what we are extremely concerned about in the case of the Hanford tanks. On the one hand, we expect a lot of waste to be left at the site. What we don't expect is for a lot of waste to be left in place, particularly in the Hanford waste tanks.

Mr. DEUTSCH. Ms. Trever?

Ms. TREVER. Mr. Deutsch, let me reiterate that Idaho's cleanup goals remain the same. We expect this to be an initiative to accelerate meeting those goals, not shortening the playing field, as it were. So, we expect the effort the Department makes to find ways to achieve our collective goals sooner, safer and more efficiently.

You have talked about reclassification of waste. I would mention that one of the difficult issues in radiological waste is not all the wastes are based on their contents, sometimes they are based on their source.

We have been evaluating, along with the Department, whether it may be appropriate or more proper to classify waste differently, and that may provide us with more cleanup options, but, again, we do not expect that to result in less cleanup.

Mr. DEUTSCH. Can I just do a followup for you specifically because of the way you answered the question, which was, I think, clear, but to focus in. I understand what your intention is and what your State's intention is. Is that the impression, though, you are getting from what DOE is saying?

Ms. TREVER. Mr. Deutsch, the impression that we are getting from DOE on the waste in question, Idaho also has a tank farm much smaller than Hanford—that is, 11 300,000-gallon tanks—is they are evaluating whether it is more proper to classify that waste as transuranic waste rather than high-level waste. We do not, however, expect that to result in leaving more waste in place. We still expect our goals for treating and removing the waste from that tank farm to be accomplished.

Mr. DEUTSCH. I appreciate that. Mr. Owsley.

Mr. OWSLEY. Tennessee has not changed any of its cleanup expectations as a result of this accelerated cleanup, nor do we expect to. Circumstances on the Oak Ridge Reservation are such that redefining waste is not an issue for the State of Tennessee.

DOE is asking the State of Tennessee to consider additional disposal and onsite CERCLA or Super Fund cleanup waste that has been constructed at the facility. We have made it clear that we do not expect to change any policies or waste exceptions criteria as a result of the cleanup and, as such, provided the material that DOE proposes to be disposed of, and the waste cell is, in fact, a CERCLA waste and meets the waste acceptance criteria, we will consider it. Otherwise, we will not.

Mr. DEUTSCH. Mr. Wilson, GAO referred to a plan to reduce the amount of vitrification of waste at one of the sites. Which site are they talking about?

Mr. WILSON. I would assume that they are talking about Hanford. As part of the Letter of Intent and the Performance Management Plan, one of the issues we are dealing with is the potential

for what we prefer to call "supplemental treatment technologies," and we are engaging with the Department of Energy in exploring alternative treatment technologies to vitrification for some of the waste.

If they come up with technologies that meet criteria for disposal and stability of the final end product, we are willing to talk to them about it. One of the main tenets of our discussion, though, is that they will proceed with the construction and operation of the vitrification plant, as it is planned right now. It is understood that we may not be able to shorten the time of final cleanup of the Hanford site unless we come up with some faster ways to treat the waste in the tanks, and so we have agreed to join in that process, but made no commitments outside of those I mentioned.

Mr. DEUTSCH. Do any of you think that the waste at your sites has been misclassified and doesn't require the level of treatment initially planned, yes or no?

Mr. WILSON. I think as long as we go forward with the plans that are in place now, I don't think that that is an issue today. We don't expect to be waving a wand over waste and reclassifying it at Hanford.

Mr. DEUTSCH. Ms. Trever?

Ms. TREVER. Yes. We, too, do not expect that classification of waste affect the ultimate outcome based on what we know now. I would also like to add on your previous question, the Department is also evaluating whether a technology or treatment approach other than vitrification for Idaho's high-level waste is also appropriate. Similar to Mr. Wilson, we are reserving judgment since converting that waste into a glass or ceramic form is what has been the baseline plan for getting that waste to geologic repository. So, we will be looking at this process, but have not made any decisions on it as yet.

Mr. DEUTSCH. Mr. Owsley?

Mr. OWSLEY. Tennessee has no difficulties with the present classification of waste on the Oak Ridge site. We do, however, have difficulty in where this material will be disposed of.

Mr. DEUTSCH. Ms. Trever, have you had any response to your proposal for collective discussions with other sites through the National Governors Association?

Ms. TREVER. I believe I have received some feedback on that, however, as you may have gathered from the discussion with the Assistant Secretary and the gentleman from the Commonwealth of Kentucky, the Department is still in the process of negotiating individual site agreements. And until it works its way through that process, I would not expect it to engage in collective discussions. Once it does complete this round of negotiations, however, I hope and expect that the Department will take advantage of that opportunity.

Mr. DEUTSCH. My last question, was it a mistake for DOE not to have consulted with you before it announced its accelerated cleanup plan? Mr. Wilson?

Mr. WILSON. I'll just say that because I think Hanford was in a unique situation because we had already started on this collaborative effort with our local site people, so we were essentially in an accelerated cleanup situation at Hanford. Although it was some-

what of a surprise, it was kind of a good surprise because we felt we were already well down the road on meeting the requirements of what was proposed in the 2003 budget.

Mr. DEUTSCH. Ms. Trever?

Ms. TREVER. I would answer for Idaho that I think the manner in which the Department proceeded with its evaluation both in the Top-to-Bottom assessment and announcement of this initiative in conjunction with the budget did set us back for a few months because there was considerable confusion about what the intentions of the Department were, and that led us to some issues in terms of public concern with the initiatives, also in terms of Idaho's Congressional Delegation. Their ability to understand what the Department's intentions were were also affected, but I think ultimately we have lost some months, we have now gotten to a place where we are moving forward and can work cooperatively with the Department on this initiative.

Mr. DEUTSCH. Thank you.

Mr. OWSLEY. For Tennessee, I don't know that it was a mistake for the Department of Energy not to share its deliberations with the individual sites. We did find it fairly disconcerting, and it did lead to a year and a half of escalating enforcement from the State of Tennessee. We were very much concerned that DOE's definition of accelerated cleanup was less cleanup, and we were certainly not willing to accept that and were preparing to fight. When they finally did release their Top-to-Bottom review, we were pleased that that was not what they were proposing, and they were, in fact, proposing what we had been asking them to do for the last 10 years, and that was accelerate the cleanup of the high-risk areas and reduce their mortgage reduction. So, once we saw what they were proposing, we were very much relieved that we were not going to have to enter into formal—or complete our formal dispute resolution.

Mr. DEUTSCH. Thank you very much.

Mr. GREENWOOD. Let me just give two more questions to get your responses on the record, if I could. Could you just describe the risk factors or the risk criteria that DOE and your States are using to prioritize cleanup projects for accelerated cleanup? What are the risk factors and risk criteria? Mr. Wilson?

Mr. WILSON. We have not incorporated any specific risk factors, that I know of. Let me speak just a little bit to the issue of risk because I look at risk in two different types of risk. There is the programmatic kind of risk and that is something that I think you should consider in the cleanup process. For instance, we have a large number of huge facilities at Hanford, some of which cost \$100 million a year just to keep the lights on and keep them safe. That \$100 million a year could be spent from now into the foreseeable future. Those facilities may pose, let us say, a medium risk to the people around them and in the near future, but they cost \$100 million a year.

If you were to spend \$125 million on that same facility for the next 5 years, you may be able to bring it down and eliminate that cost forever. So, if you spend \$25 million more for 5 years, you could get rid of that \$100 million cost forever, and I think that is something that needs to be considered when you start talking

about risk because you have got huge costs out there, and if you look at it only from a risk base, you are only seeing the tip of the iceberg.

The other is the environmental/human health kinds of risk that we talk about in cleanup, and we just simply do not have the kind of information we need to make those determinations at Hanford. There is a lot of—specifically, groundwater, particular—information and spread of contaminant kinds of information that we need to know before we can get involved in those kinds of decisionmaking processes.

Mr. GREENWOOD. Ms. Trever?

Ms. TREVER. Mr. Chairman, in response to that question, I would expand a little bit on Mr. Wilson's comments. As indicated in my testimony, there are technical risks and programmatic risks, and to make wise investments we need a clear understanding of what those are. Those have not been fully spelled out for Idaho.

When we talk about risk, I think we also need to factor in what I would call political or social risks. As an example, in Idaho we had worked with DOE to forward a treatment facility that involved incineration. There was considerable public opposition to that, particularly in the neighboring State of Wyoming, that led the Department to pull back on that option, and the Department is now re-evaluating how it will proceed with that project, but considerable amount of Agency resources, permitting resources, were invested in proceeding with an option that the Department ultimately pulled back on. So, I think when we talk about risk-based cleanup, collectively, the Congress, the Department and the States need a full and fair understanding of what the risks are as well as what the possible returns on those investments are in terms of schedule and cost savings. We need to recognize what all of the uncertainties are involved in that equation, and that will enable us to make wise investments.

Mr. GREENWOOD. Thank you. Mr. Owsley?

Mr. OWSLEY. At Oak Ridge, we have both active operations that create waste and must comply with existing Federal laws, as well as it is a Super Fund site and must comply with CERCLA or Super Fund regulations for the active waste management, for compliance with existing laws, which their criteria are based on impact to human health and the environment must be met. For the CERCLA or Super Fund cleanup, we use the standard risk measurements identified based on land use, accepted land use. If a piece of property is to be used for industrial use, then an industrial worker would be protected. If it were to be used for residential use, then residents and children would be protected.

We have identified those land uses and agreed to them. We have identified criteria to allow those levels of uses to be protected. We are still debating on the level of protection of existing groundwater and what to do with existing groundwater contamination, but we feel like once we have the source controls in place, that that will be a fairly easy decision to make.

Mr. GREENWOOD. Finally, again for each of you. DOE's testimony states that its accelerated cleanup initiative is "not focused solely or even primarily on the compliance agreements." Do you believe

that this initiative will require changes to existing compliance agreements, and will you offer that flexibility? Mr. Wilson?

Mr. WILSON. I think I have indicated in my testimony that as far as flexibility, I think we are there. We have worked long with the Department of Energy this time and in the past, and I think we have demonstrated the fact that the Tri-Party Agreement is flexible but, again, within limits, and those limits being compliance with cleanup standards.

Mr. GREENWOOD. Ms. Trever?

Ms. TREVER. Mr. Chairman, similarly, Idaho has shown a track record for flexibility in making changes where it achieves our goals more efficiently. However, our cleanup goals will remain the same, and we want to make sure that accelerating cleanup does not translate to less cleanup.

Mr. GREENWOOD. Mr. Owsley?

Mr. OWSLEY. I would reiterate the point that the State of Tennessee considered its existing Federal Facilities Agreement to be a fairly flexible agreement. We undergo an annual negotiation of cleanup milestones, so we do not see the accelerated cleanup causing a change in this flexibility, and we are prepared to work with DOE to meet the cleanup requirements of the State of Tennessee.

Mr. GREENWOOD. Thank you. Does the gentleman, Mr. Strickland, wish to inquire, or shall we adjourn the hearing?

Mr. STRICKLAND. No, thank you.

Mr. GREENWOOD. Thank you. We thank each of you for coming up to Washington and for your testimony, and wish you well, and the committee hearing is adjourned.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned.]

